

**COMMISSION ON POLICE PRACTICES**

**Wednesday, April 2, 2025**

**4:30pm-7:30pm**

**REGULAR BUSINESS MEETING  
AGENDA**

**Southeastern Live Well San Diego  
5101 Market Street,  
San Diego, CA 92114**

**PURPOSE OF THE COMMISSION ON POLICE PRACTICES**

The purpose of the Commission on Police Practices (CPP or Commission) is to provide independent community oversight of SDPD, directed at increasing community trust in SDPD & increasing safety for community and officers. The purpose of the Commission is also to perform independent investigations of officer-involved shootings, in-custody deaths and other significant incidents, and an unbiased evaluation of all complaints against members of SDPD and its personnel in a process that will be transparent and accountable to the community. Lastly, the Commission also evaluates the review of all SDPD policies, practices, trainings, and protocols and represents the community in making recommendations for changes.

The Commission on Police Practices (Commission) meetings will be conducted pursuant to the provisions of California Government Code Section 54953 (a), as amended by Assembly Bill 2249.

The Commission business meetings will be in person and the meeting will be open for in-person testimony. Additionally, we are continuing to provide alternatives to in-person attendance for participating in our meetings. In lieu of in-person attendance, members of the public may also participate via telephone/Zoom.

**The link to join the meeting by computer, tablet, or smartphone at 4:30pm is:**

<https://sandiego.zoomgov.com/j/1610950576>

**Meeting ID: 161 095 0576**

**In-Person Public Comment on an Agenda Item:** If you wish to address the Commission on an item on today's agenda, please complete and submit a speaker slip before the Commission hears the agenda item. You will be called at the time the item is heard. Each speaker must file a speaker slip with the Executive Director at the meeting at which the speaker wishes to speak indicating which item they

wish to speak on. Speaker slips may not be turned in prior to the day of the meeting or after completion of in-person testimony. In-person public comment will conclude before virtual testimony begins. Each speaker who wishes to address the Commission must state who they are representing if they represent an organization or another person.

For discussion and information items each speaker may speak up to three (3) minutes, subject to the Chair's determination of the time available for meeting management purposes, in addition to any time ceded by other members of the public who are present at the meeting and have submitted a speaker slip ceding their time. These speaker slips should be submitted together at one time to the Executive Director. The Chair may also limit organized group presentations of five or more people to 15 minutes or less.

**In-Person Public Comment on Matters Not on the Agenda:** You may address the Commission on any matter not listed on today's agenda. Please complete and submit a speaker slip. However, California's open meeting laws do not permit the Commission to discuss or take any action on the matter at today's meeting. At its discretion, the Commission may add the item to a future meeting agenda or refer the matter to staff or committee. Public comments are limited to three minutes per speaker. At the discretion of the Chair, if a large number of people wish to speak on the same item, comments may be limited to a set period of time per item to appropriately manage the meeting and ensure the Commission has time to consider all the agenda items. A member of the public may only make one Non-Agenda Public Comment per meeting. In-person public comment on items not on the agenda will conclude before virtual testimony begins.

**Virtual Platform Public Comment to a Particular Item or Matters Not on the Agenda:** When the Chair introduces the item you would like to comment on (or indicates it is time for Non-Agenda Public Comment), raise your hand by either tapping the "Raise Your Hand" button on your computer, tablet, or Smartphone, or by dialing \*9 on your phone. You will be taken in the order in which you raised your hand. You may only make one Non-Agenda Public Comment per meeting. When the Chair indicates it is your turn to speak, click the unmute prompt that will appear on your computer, tablet or Smartphone, or dial \*6 on your phone. The virtual queue will close when the last virtual speaker finishes speaking or 5 minutes after in-person testimony ends, whichever happens first.

**Written Comment through Webform:** Comment on agenda items and non-agenda public comment may also be submitted using the [webform](#). If using the webform, indicate the agenda item number you wish to submit a comment for. All webform comments are limited to 200 words. On the [webform](#), members of the public should select Commission on Police Practices (even if the public comment is for a Commission on Police Practices Committee meeting).

The public may attend a meeting when scheduled by following the attendee meeting link provided above. To view a meeting archive video, click [here](#). Video footage of each Commission meeting is posted online [here](#) within 24-48 hours of the conclusion of the meeting.

Comments received no later than 11 am the day of the meeting will be distributed to the Commission on Police Practices. Comments received after the deadline described above but before the item is called will be submitted into the written record for the relevant item.

**Written Materials:** You may alternatively submit via U.S. Mail to Attn: Office of the Commission on Police Practices, 525 B Street, Suite 1725, San Diego, CA 92101. Materials submitted via U.S. Mail must be received the business day prior to the meeting to be distributed to the Commission on Police Practices.

If you attach any documents to your comment, they will be distributed to the Commission or Committee in accordance with the deadlines described above.

- I. CALL TO ORDER/PUBLIC COMMENT INSTRUCTIONS (Chair Doug Case)
- II. ROLL CALL (Executive Assistant Alina Conde)
- III. APPROVAL OF MINUTES - Action Item
  1. Regular Business Meeting – March 5, 2025
  2. Regular Business Meeting – March 19, 2025
- IV. NON-AGENDA PUBLIC COMMENT (Community Outreach Coordinator Yasmeen Obeid)
- V. CHAIR REPORT (Chair Doug Case) – Informational Item
- VI. STAFF REPORT – Informational Items
- VII. EXECUTIVE COMMITTEE REPORT (Chair Doug Case) Informational Item
  - A. Establishment of Policy and Recruitment Standing Committees
- VIII. NEW BUSINESS
  - A. Bylaws Amendments – Executive Director and Commission Chair Duties (Action Item)
  - B. Commissioner and Commission Staff Roles and Responsibilities (Action Item)
  - C. Executive Director Performance Review Process (Action Item)
  - D. CPP Statement on SDPD’s Position Regarding Vehicle Pursuit Reform (Action Item)
  - E. Draft CPP Operating Procedures (Action Item)
  - F. Meeting Times and Locations (Action Item)
- IX. STANDING COMMITTEE REPORTS – Informational Item
  1. Rules Committee (Commissioner Bonnie Benitez)
  2. Community Outreach Committee (Commissioner Alec Beyer)
  3. Training and Continuing Education Committee (Commissioner Darlanne Mulmat)
- X. AD HOC COMMITTEE REPORTS – Informational Item

1. Operating Procedures Committee (Chair Doug Case)
2. Police Pursuits Committee (Chair Doug Case)
3. Pretext Stops Committee (1<sup>st</sup> Vice Chair Ada Rodriguez)
4. Personnel Committee (Commissioner Darlanne Mulmat)

XI. NON-AGENDA PUBLIC COMMENT (Community Outreach Coordinator Yasmeen Obeid)

XII. COMMISSIONER COMMENTS

XIII. ADJOURNMENT

**Materials Provided:**

- March 5, 2025 Meeting Minutes
- March 19, 2025 Meeting Minutes
- Proposed Bylaw Amendments (Executive Director and Commission Chair Duties)
- Commissioner and Commission Staff Roles and Responsibilities (Action Item)
- Proposed Executive Director Performance Review Process (Action Item)
- Proposed CPP Statement on SDPD's Position Regarding Vehicle Pursuit Reform (Action Item)
- Draft CPP Operating Procedures (Action Item)

**Access for People with Disabilities:** As required by the Americans with Disabilities Act (ADA), requests for agenda information to be made available in alternative formats, and any requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for alternatives to observing meetings and offering public comment as noted above, may be made by contacting the Commission at (619) 533-5304 or [commissiononpolicepractices@sandiego.gov](mailto:commissiononpolicepractices@sandiego.gov).

Requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for auxiliary aids, services, or interpreters, require different lead times, ranging from five business days to two weeks. Please keep this in mind and provide as much advance notice as possible to ensure availability. The city is committed to resolving accessibility requests swiftly.

**COMMISSION ON POLICE PRACTICES  
REGULAR BUSINESS MEETING  
Wednesday, March 5, 2024  
5:00pm-8:00pm**

**Southeastern Live Well San Diego  
5101 Market St.  
San Diego, CA 92114**

Click <https://youtu.be/JilWV9cI4Ag> to view this meeting on YouTube.

**CPP Commissioners Present:**

Chair Doug Case

1<sup>st</sup> Vice Chair Ada Rodriguez

2<sup>nd</sup> Vice Chair Clovis Honoré

John Armantrout

Alec Beyer

Cheryl Canson (arrived at 6:01pm)

Lupe Diaz (arrived at 5:24pm)

Armando Flores

Dwayne Harvey

Darlanne Mulmat

Imani Robinson (arrived at 5:20pm)

Gonzalo Rocha-Vazquez

**Excused:**

Bonnie Benitez

Steve Chatzky

Dan Lawton

**Absent:**

Christopher Kennison

**CPP Staff Present:**

Bart Miesfeld, General Counsel

Ching-Yun Li, Investigator

Ethan Waterman, Investigator

Aaron Burgess, Policy Manager

Yasmeen Obeid, Community Engagement Coordinator

Jon’Nae McFarland, Administrative Aide

Alina Conde, Executive Assistant

Jaime Jacinto, Senior Management Analyst (virtual)

- I. CALL TO ORDER/WELCOME: Chair Doug Case called the meeting to order at 5:07 pm.
- II. ROLL CALL: Executive Assistant Alina Conde conducted the roll call for the Commission and established quorum.
- III. APPROVAL OF MEETING MINUTES
  1. CPP Regular Meeting Minutes of February 5, 2025
    1. **Motion:** Commissioner Armando Flores moved for approval of the CPP Regular Meeting Minutes of February 5, 2025. Commissioner Darlanne Mulmat seconded the motion. The motion passed with a vote of 8-0-0. Yeas: 1<sup>st</sup> Vice Chair Rodriguez, 2<sup>nd</sup> Vice Chair Honoré, Armantrout, Beyer, Flores, Harvey, Mulmat, and Rocha-Vazquez  
Nays: None  
Abstained: None
    2. CPP Regular Meeting Minutes of February 19, 2025
      1. **Motion:** Commissioner Armando Flores moved for approval of the CPP Regular Meeting Minutes of February 19, 2025. Commissioner Darlanne Mulmat seconded the motion. The motion passed with a vote of 8-0-0. Yeas: 1<sup>st</sup> Vice Chair Rodriguez, 2<sup>nd</sup> Vice Chair Honoré, Armantrout, Beyer, Flores, Harvey, Mulmat, and Rocha-Vazquez  
Nays: None  
Abstained: None
- IV. NON-AGENDA PUBLIC COMMENT

**In Person Public Comment:** “Francine Maxwell” (*Timestamp 3:40*) – Thanked the Commission in regard to responses made to community emails. She has requested for the CPP to be more vigilante on finding out why the exit memos were requested from former Executive Director and Outside Counsel.

**In Person Public Comment:** “Kate Yavenditti” (*Timestamp 6:13*) – Thanked the Commission in regard to starting the meeting at 5:00pm. She also thanked the Commissioners for attending the Public Safety Meeting in February. Lastly, she spoke on the format of meeting minutes.

**Virtual Public Comment:** “Laila Aziz” (*Timestamp 8:11*) – Spoke to the Commission regarding incidents regarding SDPD Officers.

**Virtual Public Comment:** “Darwin Fishman” (*Timestamp 10:25*) – Seconded both Francine Maxwell and Kate Yavenditti spoke about during public comment. He also shared his experience while serving on the CRB. Also, spoke on officer involved shooting incidents involving minors.

**Virtual Public Comment:** “Tasha Williamson” (*Timestamp 13:35*) – Spoke to the Commission regarding SDPD response to PRA requests and prolonged case review. Additionally, she has submitted a PRA request of Public Safety Committee/City Council members communicating with the POA. She also shared misconduct allegations involving Chief Wahl.

**Virtual Public Comment:** “Yusef Miller” (*Timestamp 17:30*) – Spoke to the Commission requests for Commissioners to stand ground on remaining independent.

**Virtual Public Comment:** “Yvania Rubio” (*Timestamp 19:46*) – Thanks the Commission on their efforts and thanks the community on their role in the CPP mission.
- V. CHAIR REPORT (*Timestamp 35:25*)
  - CPP Chair Doug Case has requested an update from CouncilMember Marni von

Wilpert's office regarding update on the process to appoint an Interim Executive Director.

- Reminder to commissioners that it is a City requirement to submit the Form 700 prior to April 1<sup>st</sup>, 2025.
- Reminder that the CPP volunteer Commissioners are required to do certain trainings such as the Ethic's Training and Sexual Harassment training. Executive Assistant Alina Conde is currently finding out whether the Commissioners will be required to do the Title XI training that was recently assigned.

VI. STAFF REPORT

1. Jaime Jacinto, Senior Management Analyst presented a budget report to the Commission (*Timestamp 39:34*)

VII. EXECUTIVE COMMITTEE REPORT

1. Items discussed during the last Executive Standing Committee Meeting will be discussed during item VIII.

VIII. CPP RESPONSE TO ACTION TAKEN BY THE CITY COUNCIL'S PUBLIC SAFETY COMMITTEE ON FEBRUARY 12, 2025

A. Introduction of Key Issues

1. Proposal to Change the Size and Structure of the Commission.

**MOTION:** Commissioner Robinson moved to approve the three elements that will be included in the memo to Public Safety Committee; 1.) Keeping the (25) number of Commissioners, 2.) Establish the Recruitment Committee to develop processes, and 3.) Request to fill the vacancies immediately. Commissioner Alec Beyer seconded the amended motion. The motion passed unanimously with a vote of 11-0-0.

Yeas: 1<sup>st</sup> Vice Chair Rodriguez, 2<sup>nd</sup> Vice Chair Honoré, Armantrout, Beyer, Canson, Diaz, Flores, Harvey, Mulmat, Robinson, and Rocha-Vazquez

Nays: None

Abstained: None

2. Proposal to Change or Clarify the Process for Evaluation and Termination of the Executive Director.

**MOTION:** 2<sup>nd</sup> Vice Chair Clovis Honoré moved for the Commission to report back to the Public Safety Committee that the CPP is in the process of developing the process for evaluating and terminating the Executive Director at the CPP's discretion. The Rules Standing Committee and Ad Hoc Personnel Committee are in discussions on what the details of that are. Commissioner Alec Beyer seconded the amended motion. The motion passed unanimously with a vote of 11-0-0.

Yeas: 1<sup>st</sup> Vice Chair Rodriguez, 2<sup>nd</sup> Vice Chair Honoré, Armantrout, Beyer, Canson, Diaz, Flores, Harvey, Mulmat, Robinson, and Rocha-Vazquez

Nays: None

Abstained: None

3. Clarification of the Respective Roles of the Executive Director, Commission Chair, and the Commission.

**MOTION:** Commissioner Imani Robinson moved to report to the City Council

Public Safety Committee, that the CPP Bylaws Committee has developed provisions to the Bylaws to clarify the role of the Executive Director, Commission Chair, and the Commission. The Commission will share the actions taken by the Rules Standing Committee to be voted on by the full Commission. 1<sup>st</sup> Vice Chair Ada Rodriguez seconded the amended motion. The motion passed unanimously with a vote of 10-0-0.

Yeas: 1<sup>st</sup> Vice Chair Rodriguez, Armantrout, Beyer, Canson, Diaz, Flores, Harvey, Mulmat, Robinson, and Rocha-Vazquez

Nays: None

Abstained: None

B. Community Forum

**In Person Public Comment:** “Kate Yavenditti” (*Timestamp 58:38*) – Spoke on her thoughts regarding Councilmember Marni von Wilpert’s actions/words. She encouraged the Commission to take a stand regarding the number of commissioners on the CPP.

**In Person Public Comment:** “Francine Maxwell” (*Timestamp 1:01:15*) – Spoke on past strategies for choosing an Executive Director and shared her feelings towards the intentions of City Councilmembers. Encouraged the Commission to write policies and procedures.

**In Person Public Comment:** “Brandon Hilpert” (*Timestamp 1:04:47*) – Shared his thoughts on staffing and Commission numbers. Encourages fully staffing the OCPP.

**Virtual Public Comment:** “Darwin Fishman” (*Timestamp 1:06:29*) – Spoke on his thoughts on Councilmember Marni von Wilpert’s concerns and his experience with the CRB.

**Virtual Public Comment:** “Kevin Sullivan” (*Timestamp 1:09:26*) – Spoke on his thoughts on City Councils lack of support towards the Commission. Encouraged the Commission to continue to do the work that the community voted for.

IX. STANDING COMMITTEE REPORTS

1. Rules Committee – Discussed on item VIII.
2. Community Outreach Committee – Will be meeting Thursday, March 13. The Committee will review the website and discuss means of improving the CPP social media presence. The Committee will also continue ways to recruit volunteer commissioners to show up at community events.
3. Training and Continuing Education Committee – No updates at this time.

X. AD HOC COMMITTEE REPORTS

1. Operating Procedures Committee – General Counsel Bart Miesfeld and CPP Chair Doug Case have gone through the draft procedures left by Executive Director Paul Parker and went through them in detail. CPP Chair will need to schedule a meeting with the Committee with hopes to bring them to the Commission in an April meeting to move them forward to City Council.
2. Police Pursuits Committee – The Committee met on February 25<sup>th</sup> and went over the written responses by SDPD. The Committee also submitted 10 follow up questions but SDPD hasn’t had a chance to respond due to a delayed sending error that didn’t get to them in time. More updates will be given in April with a memo or statement for the Commission to approve.
3. Pretext Stops Committee – No updates at this time.



4. Personnel Committee – Discussed on item VIII.

XI. NON-AGENDA PUBLIC COMMENT - None

XII. COMMISSIONER COMMENTS - None

XIII. ADJOURNMENT: The meeting adjourned at 7:11 pm.

DRAFT

**COMMISSION ON POLICE PRACTICES  
REGULAR BUSINESS MEETING**

**Wednesday, March 19, 2024  
4:30pm-7:30pm**

**Southeastern Live Well San Diego  
5101 Market St.  
San Diego, CA 92114**

Click <https://youtu.be/RSv197358S8> to view this meeting on YouTube.

**CPP Commissioners Present:**

Chair Doug Case

1<sup>st</sup> Vice Chair Ada Rodriguez

2<sup>nd</sup> Vice Chair Clovis Honoré

John Armantrout

Bonnie Benitez

Cheryl Canson

Stephen Chatzky

Lupe Diaz (arrived at 4:51pm)

Armando Flores (arrived at 4:43pm)

Dwayne Harvey

Darlanne Mulmat

Imani Robinson (left at 6:21pm)

**Excused:**

Alec Beyer

Dan Lawton

Gonzalo Rocha-Vazquez

**Absent:**

Christopher Kennison

**CPP Staff Present:**

Bart Miesfeld, General Counsel

Ching-Yun Li, Investigator

Ethan Waterman, Investigator

Aaron Burgess, Policy Manager

Alina Conde, Executive Assistant

- I. CALL TO ORDER/WELCOME: Chair Doug Case called the meeting to order at 4:41 pm.
- II. ROLL CALL: Executive Assistant Alina Conde conducted the roll call for the Commission and established quorum.
- III. NON-AGENDA PUBLIC COMMENT  
**Virtual Public Comment:** “Darwin Fishman” (*Timestamp 5:29*) – Shares with the Commission that Councilmember Marni von Wilpert refuses to meet with him about his thoughts on her comments at the Public Safety Committee meeting.
- IV. CHAIR REPORT
  - Office of the City Council President stated that the nominations process will be opening to fill vacancies and the deadline will be on April 11<sup>th</sup>.
  - Executive Standing Committee will discuss the item of activating the Recruitment Committee at the next meeting.
  - Councilmember Marni von Wilpert responded to the CPP memo. (*Timestamp 9:52*)
  - CPP met with IA to discuss closed session cases, and review of shooting review board reports, and Commission/IA interactions for case review.
- V. STAFF REPORT - None
- VI. COMMISSIONER COMMENTS
  - **Steve Chatzky** (*Timestamp 20:00*) – Speaks on location choice and lack of public participation.
  - **Imani Robinson** (*Timestamp 21:31*) – Requests more information regarding the opening of the nominations.
  - **Clovis Honore** (*Timestamp 21:50*) – Speaks on the process of when to add the meeting minutes to the agenda. Secondly, asks about nomination process and those that have already applied.
  - **Armando Flores** (*Timestamp 23:46*) – Speaks on attendance for commissioners and what happens if commissioners miss meetings.
  - **John Armantrout** (*Timestamp 24:54*) – Speaks on CPP Cabinet and future role.
- VII. CLOSED SESSION (NOT OPEN TO THE PUBLIC)
  - A. Chair Doug Case led CPP into Closed Session
  - B. Public Comment - None
  - C. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE  
Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to discuss complaints, charges, investigations, and discipline (unless the employee requests an open public session) involving San Diego Police Department employees, and information deemed confidential under Penal Code Sections 832.5-832.8 and Evidence Code Section 1040. Reportable actions for the Closed Session items on the agenda will be posted on the Commission’s website at [www.sandiego.gov/cpp](http://www.sandiego.gov/cpp) or stated at the beginning of the Open Session meeting if the meeting is held on the same day.
    1. SDPD Feedback on Case-Specific Matters
      - a. Case 2024-0109 (CAT I)
    2. Review of Internal Affairs Investigations
      - a. Case 2024-0264 (CAT I)

- b. Case 2023-0385 (OIS)
- c. Case 2023-0415 (OIS)
- d. Case 2024-0238 (CAT II)
- e. Case 2024-0240 (CAT II)
- f. Case 2024-0184 (CAT I)

II. REPORT OUT FROM CLOSED SESSION (7:38 pm): General Counsel Bart Miesfeld reported that there was no reportable action.

VIII. ADJOURNMENT: The meeting adjourned at 7:39 pm.

DRAFT

### Section 3. Powers and Duties

The officers of this organization shall fulfill the duties of office while always acting for the good of the entire Commission.

#### A. Chair

The Chair shall have the following powers and duties:

- (1) To serve as Chair for all meetings, Closed and Open, of the Commission.
- (2) To serve as Chair for all meetings of the Executive Committee.
- (3) To serve as a member of the Cabinet.
- (4) To set the agenda for all Commission and, Executive Committee meetings in collaboration and consultation with the Executive Committee and Executive Director., and Cabinet ~~meetings in consultation with the Executive Director.~~
- (5) To act as the spokesperson for the Commission, to make official statements for the Commission, or to delegate this responsibility to another Commissioner. or the Executive Director. (Note E.D. job description and discuss)
- (6) Coordinate with the Executive Director on communication between the Commission and the Mayor, the San Diego City Council, the Office of the City Attorney, and the Chief of Police.
- (7) To appoint Chairs and members for all Standing Committees of the Commission. Chairs of Standing Committees shall be subject to the approval of the Commission.
- (8) To be an ex officio member and ensure effective functioning of all committees of the Commission.
- (9) To perform such other duties as may be conferred by vote of the Commission.

## Article VII. Administration

### Section 1. Executive Director

The Executive Director is appointed by the City Council and serves at the will and direction of the Commission. The Executive Director or their designee is responsible for facilitating the work of the Commission, including, but not limited to, the following tasks:

- A. Interface with community members, respond to inquiries, and receive complaints.
- B. Direct the day-to-day operations of the Commission and staff.
- C. Liaison between the Commission and City departments, in particular SDPD and the City Attorney's Office. Coordinate with the Chair on communication between the Commission and the Mayor, the San Diego City Council, the Office of the City Attorney, and the Chief of Police.
- D. Maintain records and prepare reports, including semi-annual reports to the Mayor and City Council.

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- ~~E. Hire and supervise Commission staff, independent contractors, and consultants.~~
- F. Arrange for the preparation of and dissemination of all meeting notices for the CPP and committee meetings as required by the Ralph M. Brown Act.
- G. Attend all CPP meetings, unless excused by the Chair and provide staff support for committee meetings.
- H. Serve as custodian of the Commission's records, in compliance with all applicable laws related to records retention, protection, confidentiality, and disclosure.
- I. Arrange for the preparation of and dissemination of the minutes of all CPP and committee meetings.
- J. To act as spokesperson for the Commission, to make official statements for the Commission, or to delegate responsibility to another staff member.
- K. Direct the development and management of the budget of the Commission.

### **Section 3. Powers and Duties**

The officers of this organization shall fulfill the duties of office while always acting for the good of the entire Commission.

#### **A. Chair**

The Chair shall have the following powers and duties:

- (1) To serve as Chair for all meetings of the Commission. (2) To serve as Chair for all meetings of the Executive Committee.
- (3) To serve as a member of the Cabinet.
- (4) To set the agenda for all Commission and Executive Committee meetings in collaboration and consultation with the Executive Committee and Executive Director.
- (5) To act as spokesperson for the Commission, to make official statements for the Commission, or to delegate this responsibility to another Commissioner.
- (6) Coordinate with the Executive Director on communication between the Commission and the Mayor, the San Diego City Council, the Office of the City Attorney, and the Chief of Police.
- (7) To appoint Chairs and members for all Standing Committees of the Commission. Chairs of Standing Committees shall be subject to the approval of the Commission.
- (8) To be an ex officio member and ensure effective functioning of all committees of the Commission.
- (9) To perform such other duties as may be conferred by vote of the Commission.

## **Article VII. Administration**

### **Section 1. Executive Director**

The Executive Director is appointed by the City Council and serves at the will and direction of the Commission. The Executive Director or their designee is responsible for facilitating the work of the Commission, including, but not limited to, the following tasks:

- A. Interface with community members, respond to inquiries, and receive complaints.
- B. Direct the day-to-day operations of the Commission and staff.
- C. Coordinate with the Chair on communication between the Commission and the Mayor, the San Diego City Council, the Office of the City Attorney, and the Chief of Police.
- D. Maintain records and prepare reports, including semi-annual reports to the Mayor and City Council.
- E. Hire and supervise Commission staff, independent contractors, and consultants.
- F. Arrange for the preparation of and dissemination of all meeting notices for the CPP and committee meetings as required by the Ralph M. Brown Act.
- G. Attend all CPP meetings, unless excused by the Chair and provide staff support for committee meetings.
- H. Serve as custodian of the Commission's records, in compliance with all applicable laws related to records retention, protection, confidentiality, and disclosure.
- I. Arrange for the preparation of and dissemination of the minutes of all CPP and committee meetings.
- J. To act as spokesperson for the Commission, to make official statements for the Commission, or to delegate responsibility to another staff member.
- K. Direct the development and management of the budget of the Commission.



## Commissioners and Commission Staff Roles and Responsibilities

The City of San Diego  
Commission on Police  
Practices (CPP)



1

## Commission Structure



The Commission on Police Practices is comprised of volunteer commissioners who represent various segments of the community. The Office of the Commission on Police Practices (OCPP) is comprised of professional staff that supports and implements the work of the Commission. This dual structure ensures that the Commission benefits from professional expertise while also being deeply connected to community perspectives.



Volunteer commissioners serve as a vital link between the community and the Commission, ensuring that the voices of residents are heard and considered in decision-making processes. This representation is crucial for building trust and accountability within the community.

2

## Roles & Responsibilities

- Commissioners Make Policy Decisions – The Staff Implements**
  - The professional staff execute tasks and ensures that the day-to-day activities run smoothly. Commissioners hold the authority to make strategic decisions. They evaluate performance, set priorities, and allocate resources, ensuring alignment with the CPP's mission and vision.
- Collaboration between Staff and Commissioners**
  - Successful commissions thrive on effective collaboration between staff and commissioners.
- Empowerment of Staff and Commissioners**
  - Empowering staff and commissioners through training and resources allows them to perform effectively. When all feel valued and supported, their productivity and job satisfaction increase, positively impacting the CPP's overall performance.
- Importance of Accountability**
  - Both staff and commissioners must be accountable for their actions. Accountability fosters trust and responsibility, ensuring that everyone is committed to the CPP's success and adheres to ethical standards.

3

### Difference between Executive Director and Chair/Executive Committee Roles

Executive Director	Commission Chair/Executive Committee
The Executive Director (ED) is responsible for the overall management of the OCPP. The ED leads the OCPP towards achieving its mission and manage staff.	The Chair facilitates meetings, fosters a collaborative environment, and ensures that the commission fulfills its obligations.
The ED engages with stakeholders, employees, and community members.	The Chair represents the Commission in external relations and reinforces the CPP's presence in the community.
The ED is responsible for managing the CPP's finances and ensuring sustainability.	The Executive Committee oversees financial reporting and ensures that the commission is informed about the Commission's financial status.
The ED is evaluated on previously defined goals agreed upon with the Executive Committee.	The Chair leads the performance evaluation process for the ED, ensuring that feedback is constructive and aligned with the organization's mission and goals.
The ED addresses staff-related issues, ensuring a harmonious working environment.	The Executive Committee mediates commissioners' conflicts.
The ED advocates for the Commission at various levels	The Chair represents the commissioners / community's interests.

4

## Suggested Communication for Executive Director

Executive director communication with the mayor/ city council

- The executive director may engage in discussions with the mayor or city council without initially informing the chair. This approach is deemed appropriate to facilitate timely communication, especially in urgent situations where waiting for a formal meeting may hinder progress.

Importance of transparency

- While direct communication is permitted, it is crucial to maintain transparency within the commission. The executive director should ensure that any significant discussions are later reported to the chair and the commission to uphold accountability.

Decision-making process

- No decisions or actions can be enacted by the executive director without the endorsement of the commission through a formal vote. This process safeguards the commission's authority and ensures collaborative decision-making.



5



Most board governance resources stress the importance of separating governance from operations: board members / commissioners are responsible for governance; staff are responsible for management and operations.

- Governance: vision and mission, high-level strategy, legal and ethical responsibilities, organizational and board health—today and for the future
- Operations: implementing programs, marketing and communications, human resources, accounting, etc.

6

# Proposed: Executive Director Performance Review Process

## Performance Review Process: Multi-Step

Oversight for the Executive Director of the Commission on Police Practices will provide a thorough a multi-step process, consistent with the two-step process used throughout the City of San Diego evaluating managers.

The Executive Committee and Executive Director work as a team to achieve the mission of the Commission and this process facilitates that effort.

### Step 1: Goal setting

- Executive Director and Executive Committee develop goals and performance metrics with input from the Commission.
- These goals are based on Measure B, implementation ordinance, and Commission bylaws.
- The agreed upon goals are shared with full Commission and the public.

### Step 2: Performance Focused Check Ins

- Quarterly meetings with Executive Committee (or subset thereof).
- Goal modifications are accommodated throughout the year.
- Updates are provided to the full Commission as needed in closed session.

### Annual Performance Review

In addition, once a year, input is gathered from a wider group that have personal knowledge of the Executive Director's performance related to the goals.

- 30 days prior to the annual review, the current goals are shared with full Commission and public.
- Individuals with personal knowledge of Executive Director performance related to goals can request the opportunity to provide feedback.
- A survey is used to gather direct, anonymous feedback from people familiar with Executive Director performance (e.g., Commissioners, public, law enforcement).
- Member(s) of Executive Committee compile survey results.
- The results are presented in a closed session meeting with Executive Committee and Executive Director, as well as with the full Commission.
- Performance metrics are included in the annual report, including summary of survey results while complying with confidentiality requirements.

# CPP Statement on SDPD's Position Regarding Vehicle Pursuit Reform

## **Acknowledgment of Collaboration**

The Commission on Police Practices (CPP) appreciates the San Diego Police Department's engagement in this important policy discussion and its willingness to review and respond to our recommendations. We understand the complexities and recognize the department's efforts to enhance public safety while balancing operational challenges, and we value the opportunity for continued collaboration to refine policies that serve both officers and the community. This exchange marks an important step toward aligning pursuit policies with national best practices while prioritizing the safety of officers and the public. The CPP remains committed to constructive engagement with SDPD to ensure that policy decisions are supported by data, research, and community expectations.

## **The Need for More Consideration of Restricting Pursuits to Serious Offenses**

While the San Diego Police Department has made meaningful commitments in several areas, the Commission on Police Practices firmly believes that pursuits should be restricted to violent crimes and serious felonies. The CPP is concerned by SDPD's decision to reject such limitations, especially given the risks high-speed pursuits pose to officers, bystanders, and the broader public. We remain committed to further discussions to advance evidence-based reforms that prioritize public safety and align with national best practices. From our perspective, limiting pursuits to the most serious offenses is a critical step in ensuring that San Diego's pursuit policies serve the long-term safety and interests of the entire community.

The CPP notes the absence of peer-reviewed research or data demonstrating a direct link between pursuit restrictions and increased crime. From our understanding of national studies from the International Association of Chiefs of Police (IACP), Police Executive Research Forum (PERF), and Department of Justice (DOJ) indicate that restricting pursuits to violent felonies reduces the risk of injury and death. While SDPD cites individual jurisdictions that have rolled back pursuit restrictions, these examples do not constitute conclusive evidence. The CPP urges SDPD to base its policy decisions on empirical research rather than anecdotal cases and to adopt a risk-based approach that balances the need for apprehension with public safety.

## **Transparency, Oversight, and Risk Assessment**

The proposed Vehicle Pursuit Review Board offers a valuable opportunity to formalize this transparency. Quarterly reports and tracking of liability-related data could help the department identify risks, reduce legal exposure, and more effectively manage public resources. The CPP acknowledges SDPD's commitment to improving internal data collection on vehicle pursuits, which is a positive step toward stronger oversight. We see opportunities for even greater transparency through public reporting of pursuit-related incidents, which could enhance accountability and build public trust, aligning with our shared goal of contributing to public good. We encourage SDPD to publicly report pursuit-related incidents, including injuries, fatalities, legal outcomes, and associated costs. Regular public reporting is a

recognized best practice that promotes accountability, builds public trust, and supports informed policymaking.

We look forward to participating in and evaluating SDPD's training related to vehicle pursuits. However, it remains unclear how pursuit policies are currently being communicated to officers in practice, how training incorporates risk assessment or decision-making tools, and whether there are mechanisms in place to ensure consistent application of policy in the field. The CPP encourages SDPD to provide additional information on the scope and structure of its pursuit-related training and welcomes opportunities to observe, provide feedback, and support continuous improvement efforts. The CPP also recommended that SDPD evaluate the use of a structured risk assessment tool, such as a real-time decision-making matrix, to guide pursuit decisions. Many departments use these tools to help officers objectively weigh the risks of initiating or continuing a pursuit. There was some confusion during SDPD's recent presentation to the Commission regarding whether such tools are currently in use. We would appreciate clarification on this point and encourage the department to assess the potential benefits of adopting a formal risk assessment framework to enhance consistency, reduce unnecessary risk, and support sound decision-making in the field.

### **Continued Dialogue and Commitment to Public Safety**

The Commission on Police Practices remains committed to fostering a professional and constructive dialogue with the San Diego Police Department, grounded in mutual respect and a shared commitment to public safety. We encourage all stakeholders to approach these critical policy discussions with a focus on facts, accountability, and a genuine commitment to the well-being of the community we all serve. This is an ongoing conversation, and the CPP will continue to advocate for evidence-based reforms and oversight measures that best reflect community values, national best practices, and the long-term safety of San Diegans. While we are aware of recent public statements by stakeholder groups—specifically the San Diego Police Officers Association (SDPOA)—that mischaracterize the Commission's role and work, we trust that SDPD will continue to engage with the CPP in good faith, prioritizing honesty, integrity, and transparency.

**City of San Diego  
Commission on Police Practices**

**OPERATING PROCEDURES**

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# **CHAPTER ONE**

## **COMPLAINT ADMINISTRATION PROCEDURES**

The following procedure covers the receipt, screening, review, investigation, reporting on, and disposition of complaints regarding alleged misconduct by members of the San Diego Police Department (the Police Department), in a manner that is consistent with applicable laws, including California Penal Code sections 832.5 and 832.7.

It is the policy of the Commission on Police Practices (Commission) to encourage people who have complaints concerning the conduct of police officers employed by the Police Department (Complainants) to bring their complaints to the attention of the Commission. The Commission will work to assist and accommodate Complainants regarding the complaint filing process. The Commission will handle complaints from any person without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant.

The right of a Complainant to bring a complaint is absolute and unconditional. The Commission will receive and review complaints from Complainants, even if the complaint is not filed using a formal complaint form.

### **Lodging and Filing of Complaints**

A complaint can be filed by an impacted party<sup>1</sup>, a parent or legal guardian if the impacted party is a minor, a witness to an incident, any person with knowledge of an incident, or a third-party representative for an impacted party. The Commission will accept complaints from anonymous complainants, however, the extent of Commission screening and action on such complaints may be limited.

Complaints may be lodged with the Commission online, in writing, in person, by telephone, email, or any other means deemed appropriate by the Commission. The Commission will also receive complaints filed with the Police Department, which must be transmitted to the Commission within five (5) days of receipt. Conversely, within five (5) days from receipt, Complaints received by Commission shall be forwarded to the Police Department.

The Police Department will provide a response as to the classification of each complaint forwarded to the Police Department by the Commission within seven (7) days of receipt. The Police Department will also provide a monthly status update on all complaints forwarded to the Police Department by the Commission and all Police Department investigations of alleged police misconduct, including internal investigations not resulting from a complaint, as well as officer involved shooting incidents, deaths in-custody, and deaths resulting from interactions with a police officer. According to the City of San Diego Municipal Code §26.1107(a)(6), if the Police

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<sup>1</sup> Impacted party is a person directly affected by at least one or more allegations (s) or instances of police misconduct.

Department investigation is not concluded within six months, the Police Department must provide a written report to the Commission on the status of the investigation every two weeks thereafter, until the investigation concludes. The Commission and Police Department must establish an efficient and transparent joint system allowing the two entities to mutually track complaints and matters referenced herein.

Upon receipt of the complaint, Commission staff shall screen the complaint for relevant information and make an authority assessment, as referenced in these operating procedures at Investigations Procedures. Irrespective of the mode of filing of the complaint, Commission staff will make every effort to obtain a signed attestation form from the complainant or impacted party. If such form is not obtained within five (5) days and the complaint is or may be within the Police Department jurisdiction, the complaint will be forwarded to the Police Department for further assessment and action. Commission staff will make best effort to refer complainants to appropriate agencies/jurisdictions if the complaints are not within the Police Department or Commission jurisdiction.

As part of the screening process, CPP staff must bring complaints to the attention of the Chief Investigator, who will then follow the procedure outlined in the Investigations Operating Procedure to properly classify and determine whether to initiate an independent Commission investigation. If a complaint is deemed appropriate for Commission's investigation but a complainant or impacted party does not provide a signed attestation form, Commission's action on such complaint may be limited and it may elect not to move forward with an investigation, pursuant to provisions outlined in the Investigations Operating Procedure.

## **Forms**

The Commission shall establish standard forms related to the complaint administration process, including but not limited to complaint form, attestation form, verification form, medical records release form, unsealing orders, and other forms to be signed by parties who file complaints or are parties to the Commission's investigation. The attestation form shall be in compliance with the California Penal Code section 148.6, as required by law. All forms shall be available in other languages as deemed appropriate by the Commission. Complaint form shall be available on the Commission's website, at the Commission's office, and at public meetings or outreach events of the Commission.

## **Recording of Complaints**

The Commission will maintain a central register of all complaints filed with it. The central register shall record actions taken on each complaint. Public disclosure of information from the central register shall be in compliance with applicable laws, including the California Public Records Act. The central register shall contain the following:

1. Name of the complainant, impacted party, witnesses, and subject and witness officers;
2. Commission assigned complaint number;

3. Police Department assigned case number (if applicable);
4. Date the complaint was filed;
5. Brief description of the subject matter of the complaint;
6. Date the complaint was transmitted to the Police Department;
7. Classification of the complaint;
8. Date the investigation commenced, if applicable;
9. Investigative actions taken by Commission investigators;
10. Date of the completion of the investigative report and the investigation findings; and
11. Date and content of the final disposition of the complaint.

### **Withdrawal of Complaints**

A complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant, indicating that they do not want to proceed with a formal investigation. In cases where multiple complainants exist, and one or more do not withdraw, the Commission may proceed with the investigation.

### **Notification of Parties**

Within ten (10) business days of the receipt of a complaint, the Commission will notify a complainant by telephone, email, or mail using the information provided when the complaint is filed that the Commission has received the complaint and its status.

If the Commission decides to investigate the complaint, the Commission must identify the case number and Commission staff assigned to investigate the case and provide this information to the complainant and/or impacted party.

The complainant, impacted party, or subject officer, may check on the status of the case at any time. However, the Commission must provide a notice to complainants and/or impacted parties on the status of their investigations no less than every 45 days.

After the Commission makes its final finding **or conclusion**, the Commission will notify the complainant, impacted party, **and the subject officer** of the outcome within seven (7) days of the Commission vote on the case or other Commission action.

Third-party complainants shall not be provided with confidential information pertaining to the impacted party or as otherwise prohibited by law.

## **CHAPTER TWO**

# **REQUIRED REVIEW OF INTERNAL AFFAIRS INVESTIGATIONS OF POLICE OFFICER MISCONDUCT AND EVALUATION OF OFFICER-INVOLVED SHOOTINGS**

San Diego Municipal Section 26.1107 spells out the duties and powers of the Commission on Police Practices (Commission). Subsection (a) (6) states, in part, “The Commission must review and evaluate all factual findings and evidentiary conclusions of the Police Department arising from Police Department investigations of alleged misconduct by police officers, including internal investigations not resulting from a complaint ...” Subsection (3) also gives the Commission the discretion to independently investigate complaints that meet specified criteria.

### **San Diego Police Department Investigations**

All allegations of police misconduct, including complaints generated through the Commission or an alternate process, are investigated by the San Diego Police Department (Police Department). Allegations of unlawful arrest or detention, excessive force, discrimination, slur, search and seizure violations, or criminal conduct are investigated by Internal Affairs (IA). Less serious complaints that involve only allegations of courtesy, procedure, conduct, and service are investigated by the subject officer’s Division. Allegations of criminal misconduct are investigated by the Police Department Professional Standards Unit. The investigating officer is responsible for completing a thorough investigation and writing an investigative report that is fair to both the complainant(s) and subject officer(s). Results of investigations are documented in the Investigator's Report. A complaint may contain more than one allegation. At the conclusion of the investigation, IA makes one of the following findings for each allegation:

Sustained – the Department member committed all or part of the alleged acts of misconduct;

Not Sustained – the investigation produced insufficient information to clearly prove or disprove the allegations;

Exonerated – the alleged act occurred was justified, legal and proper, or was within policy; or

Unfounded – the alleged act did not occur.

The Investigator’s Report, including the finding(s), and all related material in the Police Department investigation file are forwarded to the Commission, via the Executive Director, for their review. The Executive Director shall implement procedures to ensure compliance with all legal confidentiality requirements.

## Commission Case Review

The Commission's Executive Director and Chief Investigator will review the IA case file and advise members of the Cabinet whether a matter merits an independent investigation instead of a review. The Cabinet will have the authority to initiate an investigation after consultation with the Executive Director and Chief Investigator. The Commission will be provided a list of received complaints and complaints selected for investigation by the Cabinet and may provide feedback to the Cabinet.

The Executive Director will assign each case to be reviewed to (1) a group of Commissioners, (2) Commission staff, or (3) a combination of Commission staff and one or more Commissioners, hereinafter referred to as "Reviewers." The Reviewers will review and analyze the IA case file and prepare a report with recommendations for consideration by the Commission. All final determinations will be made by a vote of the entire Commission.

The Reviewers are responsible for reviewing the Investigator's Report and all related materials (reports, body worn camera and other videos, audio recordings of interviews, etc.). The Reviewers shall have access to all materials used by IA in the course of their investigation.

If during the course of their review, the Reviewers determine that an independent Commission investigation of one or more of the allegations that the Commission has discretion to investigate (in accordance with the City of San Diego Municipal Code section 26.1107) may be warranted, a recommendation for an independent investigation shall be sent to the Executive Director and Chief Investigator. If the Cabinet, in consultation with the Executive Director and Chief Investigator, determines that an independent investigation is not warranted or that there is insufficient time to complete an investigation within the time restrictions specified in the California Peace Officers' Bill of Rights, the case will be returned to the Reviewers for findings.

The Reviewers may contact the IA investigator if they need clarification or additional information regarding a case and the findings, if they believe the allegations listed in the Investigator's Report do not accurately capture all those asserted by the complainant, if they believe that an additional finding is warranted, or if there are other issues regarding a case. Questions may be sent via a form developed by the Office of the Commission on Police Practices. If the Reviewers desire additional communication, they may request a meeting with the IA Lieutenant supervising the investigator. If issues remain after meeting with the Lieutenant, the Reviewers can ask the Executive Director to set up a meeting with the IA Captain, which may be attended by Reviewers, appropriate Commission and IA staff, and the Commission Chair. The goal of these communications is to resolve questions, issues, and disagreements before the Reviewers finalize their report.

The Reviewers will indicate whether they determine that the Internal Affairs investigation was thorough and complete and reflects the issues raised by the complainant. For each allegation, the Reviewers will indicate their findings:

Agree – The finding(s) by IA is correct;

Agree with Comment – The finding(s) by IA is correct and additional information from the case review should be noted (comments may include, but are not limited to, the appropriateness of the tactics employed by the subject officer and the potential impact of the subject officer's actions);

Disagree with Comment – The finding(s) by IA is incorrect (comments should explain the disagreement and note the appropriate finding for IA).

Upon conclusion of the case review, the Reviewers will present a summary of the case, including the conclusions and list of evidence and documentation reviewed, to the full Commission in closed session. If the Reviewers do not have consensus on all issues, a minority report can also be submitted. The Commission will hear the case and take action regarding the final disposition of the case.

In the event that the Commission considers every possible finding and is unsuccessful in reaching the required majority vote to indicate a position on one or more findings, the Commission may close the case by vote of the Commission as a failure to achieve consensus.

The results of the Commission action are provided to IA with a detailed written explanation of any Commission concerns or disagreements. IA retains the option to amend its report based upon Commission action, in which case the amended report will be returned to the Commission for a final vote. IA does not close its case until after the Commission takes final action, unless it is necessary to do so in order to comply with time restrictions specified by the California Peace Officers' Bill of Rights. The Commission shall send a letter to the complainant and/or impacted party and the subject officer(s) briefly summarizing the Commission's findings.

In all cases where there is disagreement with an IA finding, disagreements are recorded and highlighted as part of the semiannual reports to the Mayor and City Council.

A summary of each case, with personally identifiable information redacted as required by law, shall be included in the Commission's semiannual report to the Mayor and City Council. Within one month after a summary is completed and approved by Commission's legal counsel, the redacted summary will be posted on the Commission website. A draft of the summary shall be sent to IA prior to publication so that any concerns can be reviewed by the Commission's legal counsel.

Per City Charter section 41.2, the Commission "is authorized to refer any matter before the Commission to the grand jury, district attorney, or any other governmental agency that is authorized by law to investigate the activities of a law enforcement agency" by a majority vote.

### **Evaluation of Shooting Review Board Reports**

**When the Department's Shooting Review Board (SRB) completes its review of tactics, training and equipment with regard to an officer-involved shooting, the Chief of Police shall, within ten days provide to the Commission a written report of the SRB's findings and conclusions . No action by the**

Commission is required. The Commission may, however, discuss the report in closed session, and may seek clarification from the Department. If the Commission has concerns, it may communicate those concerns in writing to the Chief of Police and/or the Chair of the Shooting Review Board.

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## **CHAPTER THREE**

### **DISCIPLINARY REVIEW PROCEDURES**

Departmental discipline that stems from complaints pertaining to alleged misconduct must be reviewed and evaluated by the Commission where there are sustained findings. Similarly, internal investigations into police misconduct resulting in sustained findings must be reviewed and evaluated by the Commission. Commission review into internal disciplinary matters is required regardless of whether a complaint has been filed.

In either situation, the Commission may exercise discretion in providing advisory recommendations or findings on discipline to the Chief of Police. Although the Commission must review and evaluate the discipline in these matters, the Commission is not required to make recommendations nor findings regarding disciplinary actions.

The Commission also has discretion whether to review or evaluate discipline of police officers arising from other matters not involving alleged misconduct. Such instances would not normally involve complaints, but might relate to performance related matters such as attention to duty, etc. In these situations, there is no requirement for the Commission to review the discipline, nor make recommendations or findings in the matters.

The Commission may establish a Discipline Review Panel, to be composed of Commission members and/or staff, to make recommendations to be considered by the full Commission.

#### **I. Mandatory Review of Disciplinary Actions**

- A. The Commission *must* review and evaluate *all* factual findings and evidentiary conclusions of the Police Department arising from Police Department investigations of alleged misconduct by police officers, including internal investigations not resulting from a complaint, and all disciplinary decisions proposed by the Chief of Police or designee following sustained findings of police officer misconduct.
- B. In order to fulfill this duty on a timely basis, within ten (10) calendar days after disciplinary decision by the Chief of Police or designee, the Department shall notify the Executive Director of the Commission and provide all supporting documentation including but not limited to the discipline imposed, a record of discipline for all previous offenses of the same misconduct type (as specified in the Department's Discipline Matrix) and documentation of any mitigating or aggravating circumstances considered by the Department. The Department will thoroughly explain and document any deviations from the Department's guidelines, as specified in the Department's Discipline Matrix



- C. The Commission's Discipline Review Panel shall evaluate the documentation provided by the Department and make a recommendation to the full Commission. The evaluation shall include, *but is not limited to*, a determination of whether the Commission concurs with the discipline imposed by the Department.
- D. Within ten (10) calendar days after the Commission votes on the recommendation from the Discipline Review Panel, the Executive Director shall notify the Chief of Police of the Commission's actions.
- E. All Commission action shall be completed within the one year statute of limitations under the California Public Safety Officers Procedural Bill of Rights Act ("POBOR"; Reference Government Code §3304(d)).

## II. **Discretionary Advisory Recommendations Regarding Discipline for Sustained Findings of Officer Misconduct**

- A. The Commission may, but is not required to, provide advisory recommendations or findings on discipline for sustained findings of officer misconduct to the Chief of Police, but must act promptly and in accordance with applicable laws, including the one-year statute of limitations under the California Public Safety Officers Procedural Bill of Rights Act ("POBOR"; Reference Government Code §3304(d)).
- B. In providing advisory recommendations on the discipline of officers to the Chief of Police, the Commission shall consider all information, agreements, and documents of prior discipline imposed, including agreements for reduced discipline, **Conditions of Continued Employment (CCEs)** or last chance agreements, and prior sustained findings of misconduct against the police officer, including prior sustained findings of misconduct made by the Commission or the Police Department, in a manner consistent with state law and the City's established disciplinary process.
- C. In order to fulfill this authority on a timely basis, the Department must notify the Executive Director within ten (10) calendar days that the Department has concluded an investigation resulting in one or more sustained findings against a police officer and provide the investigation report and related documents
- D. The Commission's Discipline Review Panel will review the finding(s) and determine whether the Commission should consider making an advisory disciplinary recommendation to the Chief of Police. If so, the Executive Director will submit a written request that the Department provide all relevant records described in II. B. above.
- E. Within ten (10) calendar days after a written request from the Commission, the Chief of Police must provide the Commission with unredacted records requested or a written explanation, setting forth the specific records or reasonably segregable portions of the records being withheld, the reason for the withholding or redactions, and the legal justification supporting the withholding or redactions. **The Chief may request a reasonable**

extension of time to provide the requested records. If the Commission disagrees with the Police Chief's decision, it may seek disclosure of the records through its subpoena power.

- F. The Commission's Discipline Review Panel shall evaluate the documentation provided by the Department and determine whether to make a recommendation to the full Commission. If the Discipline Review Panel determines to make a recommendation, it will present the recommendation to the entire Commission to vote on.
- G. Within ten (10) calendar days after the Commission votes on the recommendation from the Discipline Review Panel, the Executive Director shall notify the Chief of Police of the Commission's actions.
- H. Pursuant to Municipal Code Section 26,1107, (a) (7), the Chief of Police must provide a written substantive response within thirty (30) days after receiving the advisory disciplinary recommendation.
- I. When the Commission conducts its own independent investigation of a case, per San Diego Municipal Code §26.1107 (a) (2&3) and makes a determination of sustained findings of misconduct by an officer, the Commission may also make an advisory disciplinary recommendation. The Chief of Police is obligated to respond to the advisory disciplinary

### **III. Discretionary Review of Discipline for Actions Not Involving Misconduct**

- A. The Commission may, but is not required to, review and evaluate the Police Department's administration of discipline of police officers arising from matters not involving misconduct, i.e. job related or performance based issues.
- B. The Commission may provide advisory recommendations or findings on discipline consistent with POBOR and the aforementioned time limitations.
- C. If the Commission's Discipline Review Panel decides to evaluate a matter involving performance-based discipline, the Executive Director will submit a written request that the Department provide all relevant records.
- D. Within ten (10) calendar days after a written request from the Commission, the Chief of Police must provide the Commission with the records per the procedure indicated in II. E. above.
- E. The Commission's Discipline Review Panel shall evaluate the documentation provided by the Department and make a recommendation to the full Commission.
- F. Within ten (10) calendar days after the Commission votes on the recommendation from the Discipline Review Panel, the Executive Director shall notify the Chief of Police of the Commission's actions.

- G. The Chief of Police must provide a written substantive response within thirty (30) days after receiving a recommendation.

#### **IV. Confidentiality of Commission Records Related to Discipline**

- A. Any records obtained by the Commission are subject to strict confidentiality under the POBOR (Government Code §§3300 et seq.), Penal Code §§832.5-832.8, Evidence Code §§1040, 1043-1047 and related state and federal laws; and shall not be saved, stored, retained or maintained by Commissioners in any form, or on any personal computer, cellphone or other electronic device of any Commission member. Any disclosure of personnel records to the Commission by any City department must be in accordance with all applicable federal and state laws and regulations, including all laws and regulations pertaining to confidential medical information and personnel records.

#### **V. Factors to Consider in Evaluating Discipline**

- A. In rendering disciplinary findings, the Commission must consider the Police Department's general orders, standards of conduct and the Discipline Matrix. Including and in addition to the above factors, the Commission may also consider:
- Prior discipline imposed;
  - Agreements for reduced discipline, **Conditions of Continued Employment** and last chance agreements;
  - The seriousness of the offense;
  - Recency and frequency of prior poor conduct, misbehavior or poor performance, which is similar in nature;
  - Whether the behavior or performance was deliberate or negligent;
  - The effect of the behavior on the public, other employees or the Department;
  - Whether the behavior caused danger to the officer, other officers or the public;
  - Whether the officer's ability to perform their duties was affected;
  - Whether other officers were involved;
  - How the discipline compared to the discipline imposed against others involved;
  - Legal considerations/MOU provisions;
  - Post-incident rehabilitation efforts;
  - Nexus of officer conduct to employment;
  - Prior sustained findings of misconduct against the police officer, including prior sustained findings of misconduct made by the Commission or the Police Department, in a manner consistent with state law and the City's established disciplinary process.

## **CHAPTER FOUR**

### **INVESTIGATIONS PROCEDURES**

Article V, Section 41.2 of the Charter directs the Commission to perform independent investigations of all deaths while the person was in custody of the San Diego Police Department (Police Department) (hereinafter referred to as in-custody deaths), all deaths resulting from interactions with a police officer, all police officer-involved shootings, and other significant incidents as defined further in this procedure involving the Police Department, as well as independent evaluations of complaints against the Police Department and its personnel, in a process that is transparent and accountable to the community.

These procedures set forth guidelines for Commission investigations.

#### **I. Authority**

The Commission has the following authority over incidents and complaints.

##### **A. Type One Incidents**

The Commission must independently investigate and evaluate the following incidents, regardless of whether a complaint has been filed:

1. all deaths that occurred while a person was in custody of the Police Department;
2. all deaths that resulted from interaction with a police officer;
3. all officer-involved shootings.<sup>2</sup>

##### **B. Type Two Incidents**

The Commission may, but is not required to, investigate a complaint against a police officer that does not involve an in-custody death, a death resulting from an interaction with a police officer, or a police officer-involved shooting (Type One incidents).

The Chief Investigator and Executive Director will advise members of the Cabinet whether a matter merits an investigation. The Cabinet will have the authority to initiate an investigation after consultation with the Executive Director and Chief Investigator. The Commission will be provided a list of received complaints and complaints selected for investigation by the Cabinet and may provide feedback to the Cabinet.

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<sup>2</sup> An officer-involved shooting includes all discharges of a firearm whether a person is hit or not, excluding discharges that are deemed unintentional, training related, or conducted during the euthanization of an animal.

In exercising its discretionary power to investigate a complaint, the Commission must determine that a complaint involves any of the following:

1. an incident in which the use of force by a police officer against a person resulted in great bodily injury;
2. dishonesty by a police officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting or investigation of misconduct by another police officer, peace officer, or custodial officer, including an allegation of perjury, making a false statement, filing a false report, or destroying, falsifying, or concealing evidence;
3. an incident that has generated substantial public interest or concern;
4. an incident where data shows a pattern of misconduct by a police officer; or
5. an incident where data shows a pattern of inappropriate policies, procedures, or practices of the Police Department or its members.

In deciding whether to investigate or consider such discretionary cases, the Commission shall consider such factors to include, but not limited to : a) the nature of the case and public interest; b) resource allocation; c) the number of pending cases/investigations; d) any foreseeable delays in processing ongoing cases and investigations; e) the time commitments required of investigators and Commissioners; f) availability of evidence; g) cooperation of complainants/impacted parties/witnesses, among other factors.<sup>7</sup>

### **C. Type Three Incidents**

The Commission may, but is not required to, investigate allegations of inappropriate sexual conduct, physical assault, or domestic violence by a police officer, whether or not a complaint has been submitted to the Police Department or the Commission.

The Commission will use the same criteria outlined for Type Two incidents in determining whether to investigate Type Three matters.

**“Inappropriate sexual conduct” encompasses a variety of behaviors that can take many forms including, but not limited to, Sexual Harassment as defined by the City of San Diego Equal Employment Opportunity (EEO) Policy – Annual Statement, lewd acts (see Penal Code section 647), indecent exposure (see Penal Code section 314), sex discrimination conduct as described in Title VII of the Civil Rights Act, sexual conduct in violation of San Diego Police Policies, nonconsensual sexual contact or inappropriate touching of someone in a sexual way without their consent.**

**“Inappropriate sexual conduct” also includes behavior on the basis of sex, gender identity, or sexual orientation, or behavior of a sexual nature, that does not meet the definition of sexual harassment, but which may be verbal, visual, computer generated, written, or physical that are considered either unwelcome, harmful or objectively offensive to a reasonable person. Examples may include, but are not limited to, unwelcome requests for sexual favors involving overt or subtle pressure, unwelcome**

comments about an individual's sexual activities or preferences, exposing oneself or others without their consent in public or private, or physical conduct of a sexual nature like unwelcome touching, fondling, groping, massaging, or intentionally brushing up against another's body.

#### **D. Additional Jurisdictional Considerations**

As related to Type Two and Type Three investigations, the Commission may investigate any allegations of misconduct that become known to the Commission during an investigation. The Commission will not investigate a complaint where the complainant has requested that the complaint be handled without an investigation by the Commission or where no specific allegation or police officer can be identified or discerned. The Commission may also take into consideration the impacted party's desire to proceed or not to proceed with an investigation.

The Commission is also not authorized to investigate a complaint against an employee of the Police Department who is not a police officer unless the complaint also alleges police officer misconduct.

## **II. Complaints by the Public**

Complaints shall include complaints received from any person without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant.

Excluding Type One incidents, in order for the Commission to open an investigation, a complaint must be presented in any manner consistent with these operating procedures.. Complaints may be submitted in-person or by fax, phone, mail, email, or through any other electronic or physical means available and accessible to the Commission and/or recognized by law.

Complaints are submitted either through the Commission or at multiple locations with the Police Department. Complaints submitted with the Police Department must be transmitted to the Commission within five (5) days of receipt by the Police Department.

## **III. Cooperation between the Commission, the Police Department, and Other City Departments**

The responsibility of responding to complaints against the Police Department is shared between the Police Department, primarily but not exclusively limited to Internal Affairs (IA), and the Commission. The collaborative relationship between the two is important for a fair and objective process that gives serious consideration to community members and the Police Department officers equally. The process is improved by both organizations working together. While cooperation is key, independence of each organization is crucial.

The Department will provide to the Commission all the necessary reference documents, including but not limited to current division maps, command rosters, officer identifying information (including but not limited to identification number and photograph), radio codes list, surveillance camera locations, and other information to aid the Commission in the investigation process. Additionally, pursuant to the Commission's implementation ordinance, the Police Department must make available to the Commission its records within ten (10) calendar days after a written request from the

Commission, relating to any matter under investigation by the Commission. The Commission is required to maintain the confidentiality of all Police Department records and City personnel records, as well as the confidentiality of the case file, in accordance with applicable laws, and to respond to requests by members of the public for records in the possession of the Commission in a manner consistent with the California Public Records Act and applicable constitutional, statutory, and case law that protects personnel records.

As per the implementation ordinance, it is the policy of the City that all officers and employees of the City cooperate promptly and fully with the Commission to ensure the Commission can timely and properly perform its duties as required by the Charter, the Council by ordinance, and state and federal laws. This requirement to cooperate includes participation in any investigatory proceeding set forth in the Commission's operating procedures approved by the Council. Any city employee who fails or refuses to comply with this section is subject to discipline, up to and including termination.

If the Commission seeks to interview any City employee, including an employee who is the subject of a complaint, as part of an investigatory proceeding, the Commission must provide timely advance written notice, **in accordance with any applicable MOU**, to the employee. The Commission must also provide timely advance written notice to the City employee's appointing authority. The written notice must specify the date and time of the interview and provide the employee with reasonably sufficient time to secure union or legal representation by the employee's personal attorney, as applicable, and to make any legal objections to the interview, either before or at the time of the interview. Further guidance related to the interview process is found in the appropriate section of the set forth procedures.

## **IV. Investigation Guidelines**

### **A. General Provisions**

1. The Commission may develop internal investigation process manuals, processes, training materials, and other reference documents to aid investigators and Commissioners with case investigations. Commission investigators must follow all internal protocols and manuals pertaining to investigation procedures.
2. Commission investigations must be in compliance with all the required statutory regulations, including but not limited to Public Safety Officer Procedural Bill of Rights (POBOR). Investigators must be fair and impartial.
3. Where notified of a critical incident by the Police Department, the Chief Investigator should notify the Executive Director as soon as practical to discuss the incident and appropriate approach to the Commission's investigation.
4. The Commission will notify the subject officer and their commanding officer **by email within 24 hours of being identified by Commission staff as being a subject.**
5. Commission investigators may conduct field visits for the purposes of examining sites of

misconduct or locating/interviewing witnesses. Section IV. B provides guidance regarding Type One Incidents and related investigations.

6. Commission investigators **shall** obtain all evidence relevant to the investigation, including but not limited to Police Department documentation, records and body-worn camera footage, surveillance footage, and other types of evidence. Investigators shall not obstruct or interfere with criminal investigations but should seek early access to investigation files of agencies conducting these investigations. Investigators should seek access to any public records/reports related to the investigation.

7. Commission investigators should seek to coordinate investigations with those of Internal Affairs and/or the outside agency investigating the incident, when appropriate.

8. Commission investigators must seek to interview all relevant parties to the investigation, including complainants, impacted parties, witnesses, subject and witness officers, and other identified individuals deemed pertinent to the investigation.

9. The Commission may issue subpoenas to compel parties and/or witnesses to participate or provide evidence.

10. Commission investigators **will** carefully review, analyze, and summarize all pertinent evidence to the investigation.

11. Commission investigators **will** accurately document their investigative actions in a clear and chronological manner.

12. Commission investigators will review and understand the Police Department's procedures, general orders, and standard operating guidelines. Investigators should also identify, review, and understand relevant local, state, and federal codes and laws relevant to legal precedents as pertinent to the investigation.

13. After thoroughly analyzing facts and evidence discovered in the investigation, Commission investigators will prepare a report that discusses the facts of the investigation and compares them to the Police Departmental orders, standard operating guidelines, or relevant local, state, and federal codes and case law. Investigators must utilize the preponderance of the evidence standard when making factual and disposition conclusions, which should be supported by facts as opposed to mere simple conclusory statements..

14. Pursuant to POBOR, police investigations must generally be completed within one (1) year from the date someone authorized to initiate an investigation discovers the incident giving rise to the investigation. In general, complaints directly received and/or initiated by the Commission must be completed within one year of receipt. The time period may be tolled if criminal prosecution or investigation is involved, or civil litigation in which the officer is a party exists. The officer may also waive the time period in writing. Other waivers exist where: a) a multijurisdictional investigation is involved; b) numerous employees are involved requiring an extension; c) an officer is unavailable or incapacitated; d) the investigation involves workers compensation fraud by the officer.

15. An investigation may be reopened after the one-year statute of limitation period if both of the following exist: a) significant new evidence has been discovered affecting the outcome of the



investigation; and b) the evidence could not have been discovered in the normal course of the investigation or the evidence resulted from the officer's pre-disciplinary response or procedure. Request to reopen a case must be submitted in writing to the Commission. The Executive Director and/or Chief Investigator will make a determination as to whether to reopen the case and notify the submitting party in writing as well as notify the Commission. The Commission may also initiate an inquiry regarding reopening of a closed investigation.

16. Where possible criminal allegations exist, it is recommended that the Commission's investigation trail the criminal investigation and await a determination from the district attorney or grand jury.

## **B. Guidelines Related to Type One Incident Investigations**

The cooperation of the Police Department in making available scenes of officer-involved shootings and crime scenes related to deaths in custody or deaths resulting from interaction with the Police Department as well as related evidence is imperative in furtherance of the City implementation ordinance.

The Commission and Police Department will establish liaisons for communication regarding Type One incidents. The Department will work with the Commission's liaison to provide timely information related to Type One incidents. The Commission will provide liaison's or on-call investigator contact information to the Police Department for immediate notifications of Type One incidents. Once a Type One incident occurs, the Police Department will notify the identified on-call liaison or investigator and coordinate Commission's investigator(s) access to the death and incident scene. In situations when the Police Department determines that a death is likely, the Police Department may also make a notification to the Commission liaison.

The Commission liaison and/or investigator(s) will receive a preliminary incident briefing from the Police Department and will be privy to updates while on scene.

The Police Department liaison will escort Commission investigator(s) into, around, and out of the area or facility or designated perimeter areas of Type One incidents. The Commission investigator(s) will log their presence on scene as required by the Police Department or other investigating agency. **The Commission investigator(s) will not seek access to areas that may obstruct a criminal investigation, including crime scenes themselves or areas containing physical evidence.**

In Type One investigations, it is important for the Commission to have access to the same information provided to the Police Department consistent with the criminal investigative protocol and briefings. The Police Department will provide all relevant evidence and documentation to the Commission as soon as it becomes available to the Police Department and within the established time frame in this procedure. The City implementation ordinance also requires that the Police Department provide periodic information to the Commission every 30 days after the commencement of an investigation into allegations of misconduct.

The law enforcement agencies of San Diego County recognize the need for transparent and independent criminal investigations and reviews of all peace officer-involved shootings, use of force incidents resulting in death, and “in custody” related deaths occurring outside of the jail setting. As a result, the law enforcement agencies of San Diego County have entered into a Memorandum of Understanding establishing the Countywide Protocol for the Investigation and Review of Officer-Involved Shootings and Other Deadly Force Incidents.

The law enforcement agencies of San Diego County agree pursuant to the Countywide Protocol as outlined in the Memorandum of Understanding that incidents where officers involved are employed by the San Diego Police Department will be investigated by the San Diego Sheriff’s Department. Likewise, incidents where both the San Diego Sheriff’s Department and the San Diego Police Department have deputies/officers involved will be investigated by the Chula Vista Police Department. In such cases, when the investigations file materials by either the San Diego County Sheriff’s Department or the Chula Vista Police Department are turned over to the San Diego Police Department, the Police Department shall provide the Commission with all investigations file materials turned over, with any redactions required by law, including but not limited to, all investigative reports, witness statements, recordings, video evidence, body worn camera videos, photographs, diagrams, autopsy reports, and all other relevant evidence received by the San Diego Police Department.

Nothing in this section supersedes the Department's and/or other investigating agency authority to conduct a proper criminal investigation without interference. Commission investigators will not interfere with criminal investigations and when on scene will always work under the parameters agreed to by the Commission, Police Department, or other investigating agency.

### **C. Interviews**

When interviewing complainants, impacted parties, and witnesses, investigators must advise them as to the necessity of absolute truthfulness.

All parties interviewed may be accompanied by no more than two representatives/advisors. Advisors/representatives may advise the party as appropriate but may not participate in the interview or provide answers for the party. Advisor/representative may not be party to the investigation.

All interviews will be audio recorded and accurately summarized. In case any party to the investigation refuses for the interview to be recorded, the investigator will make best effort to take detailed notes and accurately summarize the interview.

Interviews of police officers must strictly comply with the requirements of POBOR and follow the following principles:

1. The investigator must conduct the interview at a reasonable hour, preferably when the officer is on duty or during the officer’s normal waking hours, unless the seriousness of the investigation requires otherwise.

2. The investigator must inform the officer of the position, name, and command of the person in charge of the investigation, the investigators, and other persons to be present during the interview.
3. All questions directed to the officer shall be asked by and through no more than two investigators at one time.
4. The investigator must inform the officer of the general nature of the investigation prior to any interview.
5. The investigator's interrogating session shall be for a reasonable period of time taking into consideration gravity and complexity of the issue being investigated and must allow the officer to attend to their own personal physical needs.
6. The investigator must provide the subject officer access to any recording made of an interview if any further proceedings are contemplated or prior to any subsequent interview.
7. The investigator must advise the officer of their Constitutional rights (*Miranda* Rights) as soon as it appears that the officer may be charged with a criminal offense.
8. The investigator may inform the officer that failure to answer questions directly related to the investigation may result in punitive action.
9. The investigator may record the entire interview.
10. The subject officer may record the entire interview.
11. The subject officer, in accordance with POBOR and their applicable MOU, may be represented by a person of their choice who may be present during the entire interview. However, the representative may not be a person who is subject to the same investigation. The representative cannot be required to disclose any information obtained from the employee in non-criminal matters.
12. The investigator cannot use offensive language.
13. The investigator cannot use threats of punitive action, other than informing the officer that failure to answer questions related to the investigation may result in disciplinary action up to and including termination.
14. The investigator cannot promise any rewards.
15. The officer's assertion of their rights will not be held against the officer by the investigator.

## **V. Investigation Findings**

Upon conclusion of the investigation, the Commission must make findings. Upon a careful analysis of the totality of facts in an investigation, a finding based on the preponderance of evidence and totality of facts, must be made by the Commission investigator or a supervisor reviewing the

investigation. Findings must be supported by the facts and circumstances present in the investigation. Findings will generally fall into one of six categories:

1. *Sustained*: meaning that the police officer committed all or parts of the alleged acts of misconduct.
2. *Not Sustained*: meaning that the investigation produced insufficient information to clearly prove or disprove the allegations.
3. *Exonerated*: meaning that the alleged conduct occurred, but was justified, legal, and proper, or was within policy.
4. *Unfounded*: meaning that the alleged conduct did not occur.
5. *No Finding*: where the complainant or impacted party failed to produce information to further the investigation, could not be reached for an interview, or refused to cooperate with the investigation and the complainant's or impacted party's participation is necessary to conduct the investigation or where the complainant or impacted party withdrew the complaint.
6. *Referral or No Jurisdiction*: where the investigation revealed that another agency was responsible and the complaint and/or complainant has been referred to that agency.

The Commission may either adopt one of the noted above findings or take further action as follows:

1. Agree with the investigator(s)' findings or recommend one of the above noted findings.
2. Summarily dismiss the complaint, in whole or in part (as noted in the section below).
3. Refer the complaint back to the investigator for further investigation.
4. Defer further action on the complaint.
5. Conduct an Investigative Hearing.
6. Propose disciplinary action at the conclusion of the investigation.
7. Take any other appropriate action, or disposition, or make recommendations; or the Commission may refer any matter before the Commission to the grand jury, district attorney, or other governmental agency authorized by law to investigate the activities of a law enforcement agency.

After reviewing the investigation or case report, the Commission may *summarily dismiss* a case, upon recommendation of the Executive Director or Chief Investigator, on its own motion, or that of the subject officer or the complainant/impacted party. Parties to the complaint shall be notified of a proposed summary dismissal and may appear to argue for or against summary dismissal. Summary dismissal may be appropriate in the following circumstances:

1. The complaint was not filed in a timely manner.
2. The Subject Officer is no longer employed by the Department and the Commission determines the investigation is not necessary.
3. The complaint is frivolous or clearly devoid of merit such that no reasonable person could sustain a finding based on the facts.
4. The case investigation is not completed within one year, not including any applicable tolling exemptions.

The Chief of Police must consider any findings or recommendation by the Commission of proposed police officer discipline, prior to Police Department imposition of the discipline. The Commission's findings, evaluation or recommendation must be completed before the statutory timelines set forth in POBOR or other applicable law. The Chief of Police retains authority and discretion to discipline subordinate employees in the Police Department. After the Commission makes findings, the Chief of Police must provide a written substantive response to the Commission's findings within 30 days of receipt of the findings.

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## Appendix A

### Complainant, Impacted Party, Witness Admonition.

Today's date and time is [ENTER DATE] and [ENTER TIME]. This is Investigator [ENTER NAME] and I am conducting an official investigation into the Commission on Police Practices (CPP) case number [ENTER CASE NUMBER]. The case involves an allegation of misconduct against a member of the San Diego Police Department.

This interview is taking place at [LOCATION] and is being recorded.

For the record, please state your name, address, date of birth.

Also present is/are [ENTER RECORD]

Mr./Ms./Mx. [ENTER NAME], you are being asked to provide a statement pursuant to an official CPP investigation under the authority granted the CPP pursuant to Chapter 2, Article 6, Division 11 of the San Diego Municipal Code. All statements made become part of the official investigative file and may be disclosed pursuant to subpoena or other document request to the extent permitted by law and in furtherance of criminal, administrative, or civil litigation.

Please be advised that you will be asked to sign a verification statement at the conclusion of this interview verifying that all of the statements you have provided in connection with this investigation are true to your knowledge.

[ENTER NAME], do you understand what I have just told you?

At conclusion of interview:

Is there anything that I haven't asked you about that you wish to add to the record?

I am now going to present for your signature the verification form I mentioned earlier. This form requires your signature and reflects the fact that you have verified that the statements you have made in connection with this case are true to your knowledge.

[Have the person sign the form].

The time is now [ENTER TIME] and the interview is now concluded.

## Appendix B

### Officer Admonition.

Prior to the commencement of the interviewing of a police officer, the following statement, containing a *Garrity/Lybarger*<sup>3</sup> admonition will be read to such officer:

"You are being questioned as a SUBJECT/WITNESS in this matter.

You are being questioned as part of an official investigation of the Commission on Police Practices. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of California, the Constitution of this State, and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation.

While you have the right to remain silent with regard to any criminal investigation, you do not have a right to refuse to provide a statement or answer my questions in this administrative investigation. Your refusal to cooperate in this matter or your silence can be deemed insubordination and could result in disciplinary action, up to and including termination. Any statement that you make under compulsion of the threat of discipline is for purposes of this internal or administrative investigation only and cannot be used against you in a criminal prosecution. However, statements made here may be used against you in relation to subsequent Police Department charges. Also be reminded that under the San Diego Police Department Policy 9.29, "members shall be truthful in all matters relating to their duties." Do you understand this admonition?"

Where police officer misconduct could involve an allegation of criminal conduct, the officer must be provided with a *Miranda* admonition. If the officer invokes *Miranda*, the officer may be ordered to provide a statement.

### Miranda Warning

Due to the nature of this administrative or internal investigation, I am required to advise you of your constitutional rights. Therefore, it is important that you are aware of the following:

- You have the right to remain silent;

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<sup>3</sup> *Garrity v. New Jersey* (1967) 385 U.S. 493, involved police officers who were questioned about illegal activities and answered questions after a warning that they were entitled to silence, but could be terminated if they refused to answer questions. The Supreme Court held that the protection of the Fourteenth Amendment prohibits use in subsequent criminal proceedings of statements obtained under threat of termination. The Court stated that such statements are involuntary and coerced.

In *Lybarger v. City of Los Angeles* (1985) 40 Cal. 3d 822, the California Supreme Court held that an officer who refuses to cooperate in an investigation involving his or her potential criminal conduct may be administratively disciplined; however, such discipline imposed pursuant to a threat of insubordination for refusal to answer questions involving potential criminal conduct is invalid unless a *Miranda* warning is first provided.

- Anything that you say may be used against you in court;
- You have the right to an attorney before and during questioning;
- If you cannot afford an attorney, one may be appointed by law.

### **Miranda Waiver**

Do you understand each of these rights as I have explained them to you?

Yes/No

With these rights in mind, do you wish to speak to me about this matter?

Yes/No

*(Where rights to silence are invoked, the investigator will compel the officer to provide the statement using the following script).*

I am now ordering you to provide a statement in this matter and to answer all of my questions truthfully and honestly. Your refusal to cooperate in this matter or your silence can be deemed insubordination and could result in disciplinary action, up to and including termination.

*\*\*\*(If the officer still refuses to provide a statement, a separate ground for insubordination or discipline may exist.)*



## **CHAPTER FIVE**

### **INVESTIGATIVE HEARING PROCEDURES**

The complainant, impacted party, subject officer, Executive Director, or a member of the Commission may request an Investigative Hearing for some or all of the allegations of a case. An Investigative Hearing will be conducted, in accordance with the procedures for such hearings, when the Commission determines that such a hearing may facilitate the fact-finding process.

An Investigative Hearing may be deemed to facilitate the fact-finding process when:

1. There has been an undue lapse of time since the occurrence of the incident that is the subject of the complaint;
2. There are additional witnesses, evidence, or information that contradicts or supplements, or is not disclosed by the investigative report;
3. There is reason to question the conclusion of the investigative report;
4. The case has garnered heightened public attention and an Investigative Hearing would advance public confidence in the complaint and investigation process of the Commission; or
5. An appearance in person by the parties would facilitate the fact-finding process.

#### **I Hearings in General**

The Investigative Hearing Process must be conducted consistent with the Brown Act, California Penal Code sections 832.5-832.7, California Evidence Code sections 1040-1047, and California Government Code sections 6250 et seq.

The Investigative Hearing Panel of the Commission shall consist of *five* members of the Commission, as selected by the Chair, with one member designated by the Chair as the Presiding Member. If there is an Investigative Hearing involving an officer-involved shooting or in-custody death, the Commission will sit as a whole with a quorum of the members present.

#### **II. Scope of the Investigative Hearing**

The scope of an Investigative Hearing may vary. It may consist of a single, narrowly drawn issue, multiple issues, or the entire complaint. The scope should be determined by the Commission when authorizing an Investigative Hearing, and all interested parties to the complaint shall be informed of

any limitation in scope when notified of the Investigative Hearing.

### **III. Admission or No Contest Response by Officer**

A subject officer may admit or enter a written response of “no contest” at any time prior to an Investigative Hearing. A response of “no contest” indicates that the subject officer accepts the allegations of the complaint as substantially true in fact and interpretation. The subject officer shall be bound by the terms of the “no contest” response in any further consideration of the complaint.

### **III. Hearings in General**

The Investigative Hearing Process must be conducted consistent with the Brown Act, California Penal Code sections 832.5-832.7, California Evidence Code sections 1040-1047, and California Government Code sections 6250 et seq.

The Investigative Hearing Panel of the Commission shall consist of *five* members of the Commission, as selected by the Chair, with one member designated by the Chair as the Presiding Member. If there is an Investigative Hearing involving an officer-involved shooting or in-custody death, the Commission will sit as a whole with a quorum of the members present.

#### **A. Challenges of Commission members**

1. *Challenge for conflicts of interest or bias.* A Commission member sitting on an Investigative Hearing Panel must consider all complaints in a fair and impartial manner. A member who has a personal bias or prejudice, or the appearance thereof, in the outcome of a complaint shall not sit on the Investigative Hearing Panel deciding that complaint. Personal interest in the outcome of a complaint does not include holding or manifesting any political or social attitude or belief, where such belief or attitude does not preclude objective consideration of a case on its merits. Examples of personal bias include, but are not limited to:

- a. Familial relationship, or close friendship, with parties material to the inquiry;
- b. Witnessing events material to the inquiry from a non-neutral perspective;
- c. Being a party to the inquiry;
- d. Having a financial interest in the outcome of the inquiry; and/or
- e. Holding a bias against a particular party that is sufficient to impair the Commission member’s impartiality.

2. *Procedure for challenges.* Within five calendar days after the date on which Commission furnishes notice of an Investigative Hearing, including the names of the Commission members

constituting the Investigative Hearing Panel, any party to the complaint may file a challenge for cause. Challenges for conflict of interest or bias must substantiate the challenge.

When a challenge for cause is filed, the Chair shall notify the challenged member as soon as possible, and if the member agrees that the challenge is for good cause, or otherwise agrees, the Chair shall ask another member to serve. If the challenged member does not agree that the challenge is for good cause, the Chair will poll the other members of the Investigative Hearing Panel. If a majority of the other members of the Investigative Hearing Panel agree that the challenge is for good cause, the Chair shall so notify the challenged Commission member and ask another to serve.

## **B. Public Comments**

Commission members shall avoid public comment on the substance of particular pending complaints and investigations and shall preserve the confidentiality of closed session meetings in accordance with the Brown Act and applicable law.

## **IV. Investigative Hearing Procedures**

Investigative Hearings may be scheduled by the Chair for any regular or special meeting of the Commission consistent with notice requirements under the Brown Act.

*Fourteen-day notice requirement.* Fourteen-calendar days' notice of an Investigative Hearing shall be given to the complainant, impacted party, each subject officer, and any other person whose attendance the Commission deems appropriate. The notice shall state the date, time, and place of the Investigative Hearing, and the names of the Investigative Hearing Panel members.

*Hearings are generally closed to the public.* The nature of Investigative Hearings, open or closed, will be in closed session consistent with the Brown Act and peace officer confidentiality protections existing at the time of the Investigative Hearing, unless the subject officer requests an open Investigative Hearing.

Where an incident has been or is highly known to the public, there is nothing that prevents the Commission from holding open public hearings to receive community input or comments concerning the incident. The Commission may consider community input or information in conjunction with any investigation underway but shall not form any conclusions or hold deliberations regarding the outcome of the investigation solely based on public opinion or community input.

*Authority to compel appearance.* The authority of the Commission to subpoena witnesses may be used to compel the appearance of witnesses, including subject officers, and/or the production of documents.

*Conduct of the Investigative Hearing.* Investigative Hearings should be informal and should be conducted in the following manner unless the Chair orders otherwise:

1. The Presiding Member or Chair, as applicable, will conduct the Investigative Hearing subject to being overruled by a majority of the Investigative Hearing Panel or the Commission, as applicable. Members of the Investigative Hearing Panel shall be primarily responsible for obtaining testimony. One Investigative Hearing Panel member may be assigned by the Presiding Member or the Chair to perform the initial questioning of witnesses during an Investigative Hearing convened for a case. Additional questions may be asked by any Investigative Hearing Panel member or by a subject officer or their representative.
2. At the discretion of the Commission or the Investigative Hearing Panel, opening statement(s) may be made on behalf of the complainant, impacted party, and subject officer(s) involved.
3. In the event that the subject officer is compelled to cooperate in an Investigative Hearing, Police Department personnel or Commission investigator shall provide the subject officer with the “*Garrity/Lybarger* warning” when required under the appropriate circumstances. After the Investigative Hearing Panel has taken all relevant evidence, each party may, at the discretion of the Presiding Member or the Chair, be given an opportunity to make a closing statement.
4. At the conclusion of any witness testimony, either the complainant, impacted party, or subject officer may request that the Commission or the Investigative Hearing Panel consider any additional areas of inquiry they feel need to be covered. The Presiding Member shall determine whether any further questions will be asked.
5. To the extent possible, the entire Investigative Hearing on a given complaint should be conducted in one meeting. However, if the Commission or the Investigative Hearing Panel determines that additional evidence is necessary to reach its findings, it will continue the Investigative Hearing to a future date unless the parties agree to allow the Investigative Hearing Panel to receive such material in writing without reconvening.

*Deliberation.* After obtaining evidence, the Investigative Hearing Panel will deliberate in closed session. The Investigative Hearing Panel shall not consider any information not received as part of the Investigative Hearing. The Investigative Hearing Panel may reconvene in the presence of all parties to ask further questions, and each party shall have the opportunity to respond to any such questions.

*Finding and report by the five-member Investigative Hearing Panel.* At the conclusion of an Investigative Hearing before an Investigative Hearing Panel, the Panel members shall, by majority vote, adopt a recommended finding with respect to the complaint. The Investigative Hearing Panel shall not consider evidence or information obtained outside of the Investigative Hearing. The Investigative Hearing Panel shall then prepare a written report summarizing the evidence, the recommended finding, the reasons for the recommended finding, any dissenting opinion, and any other information that may be useful to the full Commission in its consideration of the case.

*Submission to Commission.* A written Confidential Investigative Hearing Panel Report shall be forwarded to all members of the Commission, and the matter calendared as soon as possible at a scheduled regular or special meeting.

The Presiding Member will be responsible for drafting the Investigative Hearing Panel Report, a copy of which shall be forwarded, to the extent afforded by law, to each complainant, impacted party, and subject officer, together with a notice of the time and place of the Commission meeting at which the complaint will be considered. All complainants, impacted parties, and subject officers shall be notified that the Commission may accept written objections to the report within 10 days of the date of the submission of the report.

Upon consideration by the Commission, it may:

1. Vote to conclude the matter without further investigation, review, or hearings.
2. Request further information or review by staff, by the Investigative Hearing Panel, or through other appropriate means.
3. Vote to conduct further proceedings on the matter before the entire Commission.
4. Take such other or additional action as it deems necessary and appropriate, such as the making of recommendations regarding policy or rule changes, referral to appropriate agencies, or other appropriate action.
5. Accept the Confidential Investigative Hearing Panel Report as the Final Report of the Commission.

*Record of Investigative Hearing.* All Investigative Hearings shall be transcribed or recorded by a court or stenographic reporter.

## **V. Evidence at Investigative Hearings**

Investigative Hearings do not need to be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence. However, hearsay shall not be sufficient in and of itself to establish facts unless of the nature generally relied upon in civil actions.

Evidence shall be taken in accordance with the following provisions:

1. Each party and the Investigative Hearing Panel shall have the following rights:

- a. To call and examine witnesses;
  - b. To introduce exhibits;
  - c. To examine and cross-examine witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
  - d. To impeach any witness regardless of which party first called the witness to testify.
2. If the subject officer does not testify on their own behalf, they may be called and examined as if under cross-examination.
  3. Oral evidence shall be taken only under oath or affirmation.
  4. Upon the request of either party, a witness may be excluded from the Investigative Hearing until they are called to testify.
  5. Irrelevant and unduly repetitious evidence shall be excluded as determined by the Presiding Member.
  6. The rules governing privileged communications shall be effective to the extent that they are otherwise required by constitution or statute.
  7. Each party, including the Commission and any witness, shall have the right to have an attorney or representative of their choice present at all times during their own fact-finding interview or at the Investigative Hearing. The representative shall not be a witness or a person involved in the same investigation.
  8. The Commission shall have the ability to have in attendance executive staff, investigators, and legal counsel for purposes of questioning and/or legal guidance.
  9. The Chair shall have discretionary authority to provisionally qualify and utilize interpreters. Each party in need of an interpreter shall give notice to the Chair within seven days of receipt of the notice of hearing so that appropriate arrangements can be made.
  10. The authority of a Commission subpoena may be used to compel the production of documents and/or the appearance of witnesses, including the subject officer.
  11. When either the complainant, impacted party, or the subject officer fails to appear, the Investigative Hearing Panel may receive statements from those persons present and relying on the evidence received, continue with the Investigative Hearing.
  12. The Commission shall not disclose to the general public any reports, statements, files, records, documents, tapes, or other items of which the confidentiality is protected by law. This confidentiality may only be waived in accordance with applicable law, statute, ordinance, or legal proceedings.

Evidence contained in Commission's file may only be disclosed to the complainant, impacted party, and subject officer to the extent afforded by law.

13. No finding with respect to an allegation of a complaint shall be sustained unless it is proven by a preponderance of the evidence based on the totality of facts presented at the Investigative Hearing or otherwise contained in the investigative record.

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## **CHAPTER SIX**

### **PROCEDURE FOR REVIEW AND EVALUATION OF COMPLIANCE WITH FEDERAL, STATE, AND LOCAL REPORTING LAWS AND REQUIREMENTS**

Pursuant to San Diego Municipal Code section 26.1107 (a)(8), the *Commission* must *review* and *evaluate* the *Police Department's* compliance with federal, state, and local reporting laws and requirements.

On an annual basis, or as determined by the San Diego Commission on Police Practices (Commission), the Commission shall obtain information and reporting data from the San Diego Police Department (Police Department) to review and evaluate the reporting of statistics and data to the State of California Department of Justice (DOJ), or as required by law. The Commission's review and analysis shall evaluate the timely reporting of statistics and information including, but not necessarily limited to, the laws, requirements, and DOJ reporting categories listed in Appendix A.

The San Diego Municipal Code requires that all officers and employees of the City cooperate promptly and fully with the Commission to ensure the Commission can timely and properly perform its duties as required by the Charter, ordinance, and state and federal laws<sup>4</sup>.

It is further required that the Police Department make available to the Commission its records, within ten calendar days after a written request from the Commission, relating to any matter under review or evaluation by the Commission. However, any disclosure of personnel records to the Commission must be in accordance with all applicable federal and state laws and regulations<sup>5</sup>.

The Commission is required to maintain the confidentiality of all Police Department records and City personnel records, in accordance with applicable laws, and to respond to requests by members of the public for records in the possession of the Commission in a manner consistent with the California Public Records Act and applicable constitutional, statutory, and case law that protects personnel records.

In accordance with City Charter section 57, the Chief of Police retains authority over the records of the Police Department. The Chief of Police must provide records to the Commission in whole and

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<sup>4</sup> SDMC section 261108(a).

<sup>5</sup> SDMC section 261109 (a).



with all information unredacted unless, in the opinion of the Chief of Police, to do so will hinder a criminal investigation or will infringe upon the exercise of the Chief of Police's right to deliberative process and confidential communications with other law enforcement agencies, the Mayor, or with the subordinate employees of the Police Department regarding matters within the authority of the Chief of Police.

Within ten calendar days after a written request from the Commission, the Chief of Police must provide the Commission with Police Department records as specified in this section or a written explanation, setting forth the specific records or reasonably segregable portions of the records being withheld, the reason for the withholding or redactions, and the legal justification supporting the withholding or redactions<sup>6</sup>.

Pursuant to this procedure, on an annual basis and as needed, the Commission shall request records on reporting compliance in an accessible format for its review and evaluation. The Commission's review and evaluation may:

1. Analyze the Police Department's reporting compliance regarding categories listed in Appendix A below, or as specified, and verify the accuracy, completeness, and timeliness of information reported. Additional categories of reporting compliance may also be evaluated as relevant to the goals of the Commission.
2. Request that the Police Department identify its sources for the subject reported data. The Police Department shall provide the original data upon request.
3. Request that the Police Department describe its means and methodologies for collecting and reporting the data.

The Commission may create a checklist for compliance with reporting requirements and shall review and evaluate the Police Department's reporting compliance in a meeting consistent with this procedure. The Department's record of compliance with reporting shall be presented annually by December 31 of each calendar year and discussed as noticed. The Commission shall make findings at the meeting or at a future meeting if necessary.

The Commission's findings on reporting compliance and any recommendations shall be reported to the Police Department, within ten calendar days of the meeting in which the findings have been determined, and posted to the Commission's website.

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<sup>6</sup> SDMC Section 261109 (b).

## Appendix A

### List of Federal, State, and Local Requirements

Below is the list of categories of data/information that the Police Department is required to report as mandated by federal, state, and local regulations. The list is not exhaustive and can be modified to include additional categories as afforded by law.

#### Arrest Information

Arrest information is reported to the DOJ and is maintained in the Monthly Arrest and Citation Register database. This database contains information on felony and misdemeanor level arrests for adults and juveniles. Data elements include name, race/ethnicity, date of birth, sex, date of arrest, offense level, offense type, status of the offense, and law enforcement disposition. This information is used annually in publishing *Crime in California*, *Homicide in California*, and the *Criminal Justice Profile* series. Age, sex, race/ethnicity, and offense information is forwarded to the FBI for publication in *Crime in the United States*.

*PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:*

*(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.*

*(b) To report statistical data to the department at those times and in the manner that the*

*Attorney General prescribes.*

*(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.*

*PC 13021. Local law enforcement agencies shall report to the Department of Justice such information as the Attorney General may by regulation require relative to misdemeanor violations of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code.*

### **Arson Data**

Arson data are to be reported to the DOJ to provide information on the type of arson, the number of actual offenses, the number of clearances, and the estimated dollar value of property damaged. These data are published annually in *Crime in California* and the *Criminal Justice Profile* series.

*PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:*

*(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.*

*(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.*

*(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.*

Reports are due monthly, by the 10<sup>th</sup> working day of the month.

### **Critical Incidents**

The Commission requires reporting consistent with Assembly Bill 748, commencing July 1, 2019, allows a video or audio recording that relates to a critical incident, as defined, to be withheld for 45 calendar days if disclosure would substantially interfere with an active investigation, subject to extensions, as specified. The bill allows the recording to be withheld if the public interest in withholding video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, in which case the

bill allows the recording to be redacted to protect that interest. If the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction, the bill requires that the recording be promptly disclosed to a subject of the recording, his or her parent, guardian, or representative, as applicable, or his or her heir, beneficiary, immediate family member, or authorized legal representative, if deceased.

For purposes of this paragraph, a video or audio recording relates to a critical incident if it depicts any of the following incidents:

- An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.

### **Military Use Policy**

Assembly Bill (AB) 481 requires each law enforcement agency's governing body to adopt a written military use policy by ordinance in addition to other requirements by the bill. The following are required:

- Publish the draft military equipment use policy to the Police Department's website 30 days ahead of a public hearing to approve the policy.
- Obtain approval by the applicable governing body (Mayor and City Council), by adoption of a military equipment use policy prior to taking certain actions relating to the funding, acquisition, or use of military equipment, as defined. (See definitions below)
- Publish an annual report by the law enforcement agency to include each type of military equipment approved by the governing body.
- Annual review of the military equipment use ordinance by the governing body, and option to either disapprove a renewal of a type of military equipment or amend the military equipment use policy if it determines that the military equipment does not comply with standards for approval.
- Hold at least one well-publicized and conveniently located community engagement meeting within 30 days of submitting and publicly releasing the annual military equipment report.

A law enforcement agency that receives approval for a military equipment use policy is required to submit to the governing body an annual military equipment report for each type of military equipment approved by the governing body within one year of approval, and annually thereafter for as long as the military equipment is available for use. The annual report is also required to be made publicly available on the department's website.

### ***Additional Requirements for the Report***

The annual military equipment report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of military equipment:

1. A summary of how the military equipment was used and the purpose of its use.
2. A summary of any complaints or concerns received concerning the military equipment.

3. The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
4. The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
5. The quantity possessed for each type of military equipment.
6. If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.
7. Hold at least one well-publicized and conveniently located community engagement meeting within 30 days of submitting and publicly releasing the annual military equipment report.

### **Assembly Bill 48 - Use of Force Reporting for Unlawful Assembly, Protests or Demonstrations**

Effective January 1, 2022, AB 48 amended Penal Code 13652 to ban the use of kinetic energy projectiles and chemical agents by law enforcement agencies to disperse any assembly, protest, or demonstration, except by officers who have received proper training in their uses to defend against a threat to life or serious bodily injury to any individual (including a peace officer), or to bring an objectively dangerous and unlawful situation safely and effectively under control. Uses must adhere to certain requirements as defined by AB 48. Reports are due within 60 days of the incident.

*PC 13652.1(a): Each law enforcement agency shall, within 60 days of each incident, publish as summary on its internet website of all instances in which a peace officer employed by that agency uses a kinetic energy projectile or chemical agent, as those terms are defined in Section 13652, for crowd control.*

### **Citizens' Complaints Against Peace Officers**

Agencies are to report information on the number of non-criminal and criminal (misdemeanor and felony) complaints reported by citizens against law enforcement personnel and the number of complaints that were sustained.

*PC 13012: (a) The information published on the OpenJustice Web portal pursuant to Section 13010 shall contain statistics showing all of the following:*

- (1) The amount and the types of offenses known to the public authorities.*
- (2) The personal and social characteristics of criminals and delinquents.*
- (3) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.*
- (4) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in*

*dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.*

*(5)(A) The total number of each of the following:*

*(i) Civilian complaints received by law enforcement agencies under Section 832.5.*

*(ii) Civilian complaints alleging criminal conduct of either a felony or a misdemeanor.*

*(iii) Civilian complaints alleging racial or identity profiling, as defined in subdivision (e) of Section 13519.4. These statistics shall be disaggregated by the specific type of racial or identity profiling alleged, including, but not limited to, based on a consideration of race, color, ethnicity, national origin, religion, gender identity or expression, sexual orientation, or mental or physical disability.*

*(B) The statistics reported pursuant to this paragraph shall provide, for each category of complaint identified under subparagraph (A), the number of complaints within each of the following disposition categories:*

*(i) "Sustained," which means that the investigation disclosed sufficient evidence to prove the truth of allegation in the complaint by preponderance of the evidence.*

*(ii) "Exonerated," which means that the investigation clearly established that the actions of the personnel that formed the basis of the complaint are not a violation of law or agency policy.*

*(iii) "Not sustained," which means that the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation in the complaint.*

*(iv) "Unfounded," which means that the investigation clearly established that the allegation is not true.*

*(C) The reports under subparagraphs (A) and (B) shall be made available to the public and disaggregated for each individual law enforcement agency.*

*(b) The department shall give adequate interpretation of the statistics and present the information so that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of criminals and delinquents, or those concerned with the prevention of crime and delinquency. This interpretation shall be presented in clear and informative formats on the OpenJustice Web portal. The Web portal shall also include statistics that are comparable with national uniform criminal statistics published by federal bureaus or departments.*

*(c) Each year, on an annual basis, the Racial and Identity Profiling Advisory Board (RIPA), established pursuant to paragraph (1) of subdivision (j) of Section 13519.4, shall*

*analyze the statistics reported pursuant to subparagraphs (A) and (B) of paragraph (5) of subdivision (a) of this section. RIPA's analysis of the complaints shall be incorporated into its annual report as required by paragraph (3) of subdivision (j) of Section 13519.4 and shall be published on the OpenJustice Web portal. The reports shall not disclose the identity of peace officers.*

### **Crimes and Clearances**

Crimes and clearances information is to be reported to the DOJ to provide statistical data on the offenses of criminal homicide, forcible rape, robbery, assault, burglary, larceny-theft, and motor vehicle theft. The data are to include the number of actual offenses as well as the number of clearances. Supplemental data are also collected on the nature of crime and the value of property stolen and recovered. Data are published annually in *Crime in California* and the *Criminal Justice Profile* series. This information is also forwarded to the FBI for publication in *Crime in the United States*. Reports are due monthly, by the 10<sup>th</sup> working day of the month.

*PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:*

*(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.*

*(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.*

*(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.*

### **Deaths in Custody**

Information on persons who die while in the custody of a local or state law enforcement agency is to be reported to the DOJ to provide descriptive statistical information on the circumstances relating to the death. In addition to an agency's initial report of an inmate death, an annual survey will be conducted to verify the total number of inmate deaths per agency per calendar year. Reports are due within 10 days of the date of death.

*GC 12525: In any case in which a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility in this state, the law enforcement agency*

*or the agency in charge of the correctional facility shall report in writing to the Attorney General, within 10 days after the death, all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning the death. These writings are public records within the meaning of Section 7920.530 of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), and are open to public inspection pursuant to Sections 7922.500 to 7922.545, inclusive, 7923.000, and 7923.005. Nothing in this section shall permit the disclosure of confidential medical information that may have been submitted to the Attorney General's office in conjunction with the report except as provided in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.*

### **Domestic Violence-Related Calls for Assistance**

Domestic violence information is to be reported to the DOJ to provide monthly summary statistical data on the number of domestic violence-related calls received, number of cases involving weapons, and the type of weapon used during the incident. This information is published annually in *Crime in California* and the *Criminal Justice Profile* series.

*PC 13730 (a). Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General. . . .*

*(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. The report shall include at least all of the following:*

*(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.*

*(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.*

### **Hate Crime**

Hate crime data are to be reported to the DOJ to provide information on the location of crime, type of bias-motivation, victim type (individual/property), number of victims/suspects, and victim's/suspect's race. This information is published in *Hate Crime in California*, an annual report to the California Legislature, and provided to the FBI for publication in *Crime in the United States*.



*PC 13023:(b)(1) The Attorney General shall direct state and local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to hate crimes.*

*(2) The Attorney General shall review state and local agencies' formal policies on hate crimes required by Section 422.87 and the hate crime brochure required pursuant to Section 422.92. The department shall review the policies and brochures for compliance with law. The department shall instruct any agency that did not submit a policy or brochure, or that submitted a legally noncompliant policy or brochure, to submit compliant documents.*

*(c)(1) Law enforcement agencies are required to submit the hate crime documents required by the Attorney General as follows...*

*(D) On or before January 1, 2028, each law enforcement agency in the Counties of Fresno, Kern, Kings, Madera, Mariposa, Merced, Tulare, Imperial, Inyo, Mono, Riverside, San Bernardino, and San Diego shall produce their hate crime materials to the Department of Justice.*

*(2) The production of hate crime materials pursuant to paragraph (1) shall proceed on a four-year schedule and shall be ongoing. All law enforcement agencies, including special districts, shall produce to the Attorney General's office their hate crime materials on the specified date listed above, and then every four years thereafter in perpetuity.*

*(d) On or before July 1 of each year, the Department of Justice shall update the OpenJustice Web portal with the information obtained from law enforcement agencies pursuant to this section. The information shall include the names of agencies that submitted compliant policies and brochures, including any agency that submitted revised compliant documents. The department shall submit its analysis of this information to the Legislature in the manner described in subdivision (g) of Section 13010.*

*(e) Law enforcement agencies shall additionally post the information required in paragraph (1) of subdivision (b) to their internet websites on a monthly basis.*

*(f) For purposes of this section, "hate crime" has the same meaning as in Section 422.55.*

### **Homicide**

Homicide data are to be reported to the DOJ to provide information on the number of homicides, the victim/offender relationship, the day and month of the homicide, location, type of weapon used, and precipitating event. Homicide data are published annually in *Homicide in California*, *Crime in California*, and the *Criminal Justice Profile* series. Data are also reported to the FBI for publication in *Crime in the United States*. Reports are due monthly, by the 10<sup>th</sup> working day of the month.

*PC 13014 (b). Every state or local governmental entity responsible for the investigation and*

*prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime, including age, gender, race, and ethnic background.*

*PC 13022. Each sheriff and chief of police shall annually furnish the Department of Justice, in the manner prescribed by the Attorney General, a report of all justifiable homicides committed in his or her jurisdiction. In cases where both a sheriff and chief of police would be required to report a justifiable homicide under this section, only the chief of police shall report the homicide.*

### **Law Enforcement and Criminal Justice Personnel Survey**

Agencies are to report to the DOJ the number of full time, sworn, and non-sworn male and female law enforcement personnel employed by law enforcement agencies, District Attorneys, Public Defenders, or Probation Departments. Data are published annually in *Crime in California* and the *Criminal Justice Profile* series. Data are also provided to the FBI for publication in *Crime in the United States*. Reports are due annually.

*PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:*

*(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.*

*(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.*

*(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.*

### **Law Enforcement Officers Killed or Assaulted**

Data on peace officers who were killed or assaulted in the line of duty are to be reported to the DOJ to provide information on the type of criminal activity, type of weapon used, type of assignment, time of assault, number with or without personal injury, police assaults cleared, and officers killed by felonious act or by accident or negligence. This information is published annually in *Homicide in California*. Reports are due monthly, by the 10<sup>th</sup> working day of the month.

*PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:*

*(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.*

*(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.*

*(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.*

### **Racial and Identity Profiling Act (RIPA) Data**

In 2015, California passed the Racial and Identity Profiling Act (RIPA). The bill requires each state and local agency that employs peace officers to annually report data on all stops to the Attorney General's Office. In addition, RIPA also created a RIPA Board, which is tasked with making data collection and analysis recommendations to the Attorney General's Office. As one of the eight largest law enforcement agencies in California, the San Diego Police Department is required to begin collect data and provide that data to the State Department of Justice (DOJ). RIPA requires each agency to submit its data to DOJ by April 1st of the following year.

*GC 12525.5: (a)(1) Each state and local agency that employs peace officers shall annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year.*

*(2) Each agency that employs 1,000 or more peace officers shall begin collecting data on or before July 1, 2018, and shall issue its first round of reports on or before April 1, 2019. Each agency that employs 667 or more but less than 1,000 peace officers shall begin collecting data on or before January 1, 2019, and shall issue its first round of reports on or before April 1, 2020. Each agency that employs 334 or more but less than 667 peace officers shall begin collecting data on or before January 1, 2021, and shall issue its first round of reports on or before April 1, 2022. Each agency that employs one or more but less than 334 peace officers shall begin collecting data on or before January 1, 2022, and shall issue its first round of reports on or before April 1, 2023.*

*(b) The reporting shall include, at a minimum, the following information for each stop:*

- (1) *The time, date, and location of the stop.*
- (2) *The reason for the stop.*
- (3) *The result of the stop, such as, no action, warning, citation, property seizure, or arrest.*
- (4) *If a warning or citation was issued, the warning provided or violation cited.*
- (5) *If an arrest was made, the offense charged.*
- (6) *The perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped. For motor vehicle stops, this paragraph only applies to the driver, unless any actions specified under paragraph (7) apply in relation to a passenger, in which case the characteristics specified in this paragraph shall also be reported for that passenger.*
- (7) *Actions taken by the peace officer during the stop, including, but not limited to, the following:*
  - (A) *Whether the peace officer asked for consent to search the person, and, if so, whether consent was provided.*
  - (B) *Whether the peace officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any.*
  - (C) *Whether the peace officer seized any property and, if so, the type of property that was seized and the basis for seizing the property.*

*(c) If more than one peace officer performs a stop, only one officer is required to collect and report to the officer's agency the information specified under subdivision (b).*

*(d) State and local law enforcement agencies shall not report the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to a property seizure, for purposes of this section. Notwithstanding any other law, the data reported shall be available to the public, except for the badge number or other unique identifying information of the peace officer involved. Law enforcement agencies are solely responsible for ensuring that personally identifiable information of the individual stopped or any other information that is exempt from disclosure pursuant to this section is not transmitted to the Attorney General in an open text field.*

*(e) Not later than January 1, 2018, the Attorney General, in consultation with stakeholders, including the Racial and Identity Profiling Advisory Board (RIPA) established pursuant to paragraph (1) of subdivision (j) of Section 13519.4 of the Penal Code, federal, state, and local law enforcement agencies and community, professional, academic, research, and civil and human rights organizations, shall issue regulations for the collection and reporting of data required under subdivision (b). The regulations shall specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices across all reporting agencies. To the best extent possible, the regulations should be compatible with any similar federal data collection or reporting program.*

*(f) All data and reports made pursuant to this section are public records within the meaning of Section 7920.530 and are open to public inspection pursuant to Sections 7922.500 to 7922.545, inclusive, 7923.000, and 7923.005.*

*(g)(1) For purposes of this section, "peace officer," as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, is limited to members of the California*

Highway Patrol, a city or county law enforcement agency, and California state or university educational institutions. "Peace officer," as used in this section, does not include probation officers and officers in a custodial setting.

(2) For purposes of this section, "stop" means any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control.

### **Reporting of Data on Vehicle Pursuits**

The Department must report data on vehicle pursuits in conjunction with Vehicle Code section 14004.7 and high-speed vehicle pursuits. Reports are due no later than 30 days following a pursuit.

*VC14602.1 (a) Every state and local law enforcement agency, including, but not limited to, city police departments and county sheriffs' offices, shall report to the Department of the California Highway Patrol, on a paper or electronic form developed and approved by the Department of the California Highway Patrol, all motor vehicle pursuit data.*

*(b) Effective January 1, 2006, the form shall require the reporting of all motor vehicle pursuit data, which shall include, but not be limited to, all of the following:*

*(1) Whether any person involved in a pursuit or a subsequent arrest was injured, specifying the nature of that injury. For all purposes of this section, the form shall differentiate between the suspect driver, a suspect passenger, and the peace officers involved.*

*(2) The violations that caused the pursuit to be initiated.*

*(3) The identity of the peace officers involved in the pursuit.*

*(4) The means or methods used to stop the suspect being pursued.*

*(5) All charges filed with the court by the district attorney.*

*(6) The conditions of the pursuit, including, but not limited to, all of the following:*

*(A) Duration.*

*(B) Mileage.*

*(C) Number of peace officers involved.*

*(D) Maximum number of law enforcement vehicles involved.*

*(E) Time of day.*

*(F) Weather conditions.*

*(G) Maximum speeds.*

*(7) Whether a pursuit resulted in a collision, and a resulting injury or fatality to an uninvolved third party, and the corresponding number of persons involved.*

*(8) Whether the pursuit involved multiple law enforcement agencies.*

*(9) How the pursuit was terminated.*

*(c) In order to minimize costs, the department, upon updating the form, shall update the corresponding database to include all of the reporting requirements specified in subdivision (b).*

*(d) All motor vehicle pursuit data obtained pursuant to subdivision (b) shall be submitted to the Department of the California Highway Patrol no later than 30 days following a motor vehicle pursuit.*

*(e) The Department of the California Highway Patrol shall submit annually to the Legislature a report that includes, but is not limited to, the following information:*

*(1) The number of motor vehicle pursuits reported to the Department of the California Highway Patrol during that year.*

*(2) The number of those motor vehicle pursuits that reportedly resulted in a collision in which an injury or fatality to an uninvolved third party occurred.*

*(3) The total number of uninvolved third parties who were injured or killed as a result of those collisions during that year.*

### **Reporting on Anti-Reproductive Rights Crime Data**

Anti-Reproductive-Rights Crimes data are to be reported to the DOJ to provide information on crimes that are committed against reproductive health services providers, clients, assistants, or the facilities where these services are provided or at a place of worship because of the church's beliefs regarding reproductive rights. The data include the location of the crime, victim type (individual/property), race/ethnicity, gender of victims and suspects, weapon involved, and property loss or damage.

*PC 13777 (a)..... the Attorney General shall do each of the following:*

*(1) Collect and analyze information relating to anti-reproductive-rights crimes, including, but not limited to, the threatened commission of these crimes and persons suspected of committing these crimes or making these threats.*

*(2) Direct local law enforcement agencies to report to the Department of Justice, in a manner that the Attorney General prescribes, any information that may be required relative to anti-reproductive-rights crimes. . . .*

Reports are due monthly, by the 10<sup>th</sup> working day of the month<sup>7</sup>.

### **Senate Bill 16 – Disclosure of Certain Peace Officer Records of Sustained Complaints**

Effective January 1, 2022, SB 16 amended sections of the Penal Code to expand publication of peace officer and custodial officer records relating to the report, investigation, or findings of any of the following:

- A sustained finding involving a complaint that alleges unreasonable or excessive force.
- A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.
- Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.
- Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
- Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.

### **Senate Bill 1421 – Disclosure of Certain Records Related to Reports, Investigations and Findings**

Effective January 1, 2019, SB 1421 amended sections of the Penal Code which generally made all peace officer personnel records and information confidential and exempt from disclosure, except by motion in a criminal, civil, or administrative action.

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<sup>7</sup> All reporting due dates are reflected in the State of California Department of Justice Criminal Statistics Reporting Requirements, effective in April 2014, and/or reflected by California law.

SB 1421 created exceptions that allow the public to obtain peace officer and custodial officer records relating to the report, investigation, or findings of:

- An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.
- Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.
  - As used in this subparagraph, “sexual assault” means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.
  - As used in this subparagraph, “member of the public” means any person not employed by the officer’s employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.
- Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

### **Senate Bill 2 - Reporting Requirements for Serious Misconduct of Officers**

Senate Bill (SB) 2 requires State of California Commission on Peace Officer Standards and Training (POST) to revoke certification when an individual has become ineligible to hold office as a peace officer under Government Code section 1029, or when an individual has been terminated for cause for, or otherwise engaged in, “serious misconduct”. SB 2 leaves the precise definition of “serious misconduct” open to regulatory interpretation by POST, but it specifies that the term shall at a minimum, include all of the following:

1. Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including making false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct;
2. Abuse of power, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest;
3. Physical abuse, including, but not limited to, the excessive or unreasonable use of force;
4. Sexual assault;



5. Demonstrating bias on the basis of any legally protected status, in violation of law or department policy, or in a manner inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner;
6. Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by POST;
7. Participation in a "law enforcement gang;"
8. Failure to cooperate with an investigation into potential police misconduct; and
9. Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances.

The bill also amends Penal Code section 832.7 (the Pitchess statute) to allow disclosure to POST of otherwise-confidential peace officer personnel records.

SB 2 also amended Government Code section 1029 to exclude the following individuals from peace officer employment:

1. An individual discharged from the military after adjudication by a military tribunal for committing an offense that would have been a felony if committed in California, whether or not the person received a criminal conviction for the offense.
2. An individual convicted of a felony, including by a guilty plea or a plea of nolo contendere, will remain disqualified even if a later court sets aside, vacates, withdraws, expunges, or otherwise reverses the conviction, unless the court specifically finds the person to be factually innocent of the crime for which they were convicted.
3. An individual convicted of any one of several specific enumerated crimes of dishonesty, or conduct in another jurisdiction that would have constituted one of those crimes if committed in California. The listed crimes include, but are not limited to, bribery, corruption, perjury, falsifying evidence, witness tampering, forging or falsifying government records, tampering with a jury or the jury selection process.
4. An individual adjudicated to have committed acts that would constitute one of those enumerated crimes in an administrative, military, or civil judicial process that requires at least "clear and convincing evidence."
5. An individual whose POST certificate was revoked (or denied) or who voluntarily surrendered the certification.
6. An individual whose name appears in the National Decertification Index or any similar database designated by the federal government and the individual's certification as a law enforcement officer was revoked for misconduct, or if the individual engaged in serious

misconduct that – had they been employed in California – would have resulted in POST revoking their certificate.

In addition, Section 1029 requires the DOJ to supply POST with any disqualifying felony or misdemeanor conviction data for all persons known to be current or former peace officers.

SB 2 requires all agencies that employ peace officers to submit reports to POST any time one of the following occurs:

1. The agency employs, appoints, terminates, or separates from employment any peace officer, including involuntary terminations, resignations, and retirements.
2. A complaint, charge, or allegation of conduct is made against a peace officer employed by the agency that could result in decertification.
3. A civilian oversight entity or review board, civilian police commission, police chief, or civilian inspector general makes a finding or recommendation that a peace officer employed by the agency engaged in conduct that could result in decertification.
4. The final disposition of an investigation determines that a peace officer engaged in conduct that could result in decertification, regardless of the discipline imposed (if any).
5. A civil judgment or court finding is made against a peace officer based on conduct that could result in decertification, or a settlement is reached in civil case against a peace officer or the employing agency based on allegations of officer conduct that could result in decertification.

The Police Department has ten days to make the relevant report. For reports regarding separation of a peace officer, the bill requires agencies to execute and submit an “affidavit-of-separation” form under penalty of perjury, which must describe the reason for separation and whether the separation is part of resolving or settling any pending charge or investigation.

The reporting requirements do not necessarily require that the reportable conduct is egregious enough to make it likely that POST will ultimately decertify the officer.

The Police Department is required to complete any investigation into allegations of “serious misconduct” by a peace officer – i.e. conduct that could subject a peace officer to decertification – regardless of the employment status of the officer. Even if a peace officer voluntarily resigns, retires, is released from probationary employment, is terminated on unrelated grounds, or separates from employment for any other reason so that no disciplinary action could take place, the Department may still be required to complete any pending investigation of serious misconduct.

Any time that the Department has reported to POST a complaint, charge, or allegation of serious misconduct, the Department must retain the investigation records, including any physical or documentary evidence, witness statements, analysis, and conclusions, for at least two years after

making the report. The Department must also make the records available for inspection by POST on request.

### **Violent Crimes Committed Against Senior Citizens**

San Diego County handles over 10,000 reports of elder and dependent adult abuse each year. Information regarding violent crimes committed against senior citizens must be reported to DOJ to provided summary data on the number of persons 60 years of age or older who were victims of homicide, forcible rape, robbery and aggravated assault.

*Senate Concurrent Resolution No. 64, Chapter 147, 1982, be it resolved by the Senate of the State of California, the Assembly thereof concurring, that local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older.*

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## **CHAPTER SEVEN**

### **RECORDS RETENTION PROCEDURE**

The purpose of the procedure is to ensure accurate disposition of records by the Commission on Police Practices (the Commission). The Commission must classify, retain, and dispose of its records in accordance with applicable state and federal laws as well as local regulations, including but not limited to San Diego Municipal Code (SDMC) Chapter 2, Article 2, Division 26, City of San Diego Administrative Regulations (AR) 85.10 and 85.30, and City of San Diego City Clerk Administrative Guidelines.

Pursuant to SDMC §22.2602, the Commission must develop a Department Retention File Plan as well as follow the City Master Records Schedule, in accordance with AR 85,10

#### **Responsibilities of the Executive Director**

As required in §22.2604, AR 85.10, City of San Diego City Clerk Administrative Guidelines, among other responsibilities, the Executive Director:

- a. Appoints a Records Retention Coordinator for the Commission.
- b. Ensures the Commission is in compliance with its statutory records retention obligations.
- c. Reviews the Department Retention File Plan every three years, and recommends revisions to the City Clerk if there are changed administrative, legal, operational, fiscal, or historical requirements.
- d. Works with the City Clerk on archiving historical records and preserving vital records.

## **General Provisions**

Pursuant to SDMC §22.2606, records for which a retention period is defined by local, state, or federal law or regulation shall be retained for that authority's stated retention period or expiration of the retention period in the Master Records Schedule, whichever is longer.

All records shall be retained for the retention period in the Master Records Schedule or until the termination of a legal hold, whichever is longer.

The Commission will follow the Department Retention File Plan included in Appendix A. As noted above, the Plan is subject to change and must be approved by the City Clerk. The most up-to-date version of the Plan must be followed as part of this procedure.

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**Appendix A (Excel spreadsheet)**

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## **CHAPTER EIGHT**

# **PUBLIC RECORDS REQUESTS AND COMMUNICATIONS PROCEDURE**

The Commission on Police Practices (the Commission) is committed to accountability, transparency and providing access to public records pursuant to the California Public Records Act (CPRA). The California Public Records Act gives the public the right to access records created and maintained by public agencies in the course of their normal business.

### **Public Records**

Pursuant to Government Code Section 7920.530(a), a public record is defined as “any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”

Public records requests may be used to obtain information or records, which include a wide variety of documents and other materials (including print, photographic, and electronic formats) that were created or obtained by the Commission and are, at the time the request is filed, in the Commission’s possession and control. The CPRA excludes certain categories of law enforcement and personnel records from disclosure.

### **CPRA Request Submissions**

Many Commission records are available online or must be obtained by the specific process below.

A person may submit a CPRA request by submitting their request directly on the City online records portal; by mail, email, telephone, or facsimile to the Commission; or by describing their request in person to a staff member at the Office of the Commission on Police Practices.

The process of submitting the CPRA request via the City online records portal is described in more detail below:

1. Navigate to NextRequest link: <https://sandiego.nextrequest.com/>.

2. Make a new public records request by clicking Make Request.
3. Request a public record request by adding a description, selecting a department, and adding personal information.
4. Upon submitting the request, the requester will receive email notifications regarding the status of the request.

The portal is for public records requests for the City of San Diego only. Records Requests on the portal are public. Requesters' information is not published on the portal by default; however, the information is public and may be released in response to a public records request.

In accordance with the City of San Diego's Master Retention Schedule, Public Records Act requests and the records provided in response in NextRequest, are deleted from the portal after five years from the date of closure. The requester is not required to include a City department when submitting a request, however if they are aware of one or more departments that may have records for the request, they may list them in the request. City staff will assign the request to all applicable departments.

The Commission allows anyone to submit a CPRA request. Requesters are strongly encouraged to provide online contact information, if available. This will allow Commission staff to send electronic notifications regarding the status of a request.

To facilitate the CPRA request, the Commission strongly encourages the requester to:

1. Describe the nature of the record being requested and/or provide the name or identification number of the records to the best of the requester's knowledge.
2. Search prior requests on the portal or the documents page for previously published records (<https://sandiego.nextrequest.com/documents>).
3. Be as specific as possible with the types of records that the requester is requesting.
4. Provide the time frame or date range the requester is interested in. For example: Fiscal Year 2024 or from February 2024 to present.
5. When possible, identify the officers or employees that may be involved in the subject matter. List all known departments or employees that may be involved in the subject matter.
6. Where applicable, provide information concerning incidents, dates of incidents, specific addresses, block numbers, intersections or locations.

The Commission is subject to California laws relating to public records. All information contained in a CPRA request, including a requester's information, is considered public record, and may be subject to public inspection, pursuant to Government Code Section 6252(.

## **Anonymous Requests**



CPRA requests may be submitted anonymously; however, the Commission will not be able to provide updates or seek clarification on anonymous CPRA requests. It will be the requester's responsibility to check with the Commission for records that are posted publicly or in response to a particular request.

If the requester submits a request via the City online records portal without contact information, the portal will not allow the requester to receive updates for the request and the requester will not be able to log in to access documents. It will be the requester's responsibility to check the portal for records that are posted publicly on the portal in response to the request. If the City needs clarification on the request in order to respond to the request and the requester provide no way to contact them, the request may be closed without a response.

### **Not City of San Diego Records**

The following are not City of San Diego records. The requester may contact the agencies identified below for these records.

1. Vital records (birth, death, marriage records): County of San Diego at <https://arcc.sdcounty.ca.gov/Pages/recorder.aspx>
2. Court records (including divorce records): San Diego Superior Court at <http://www.sdcourt.ca.gov/>
3. Property records (property tax and real estate ownership records): County of San Diego at <https://www.sdttc.com/>

### **Investigatory Privilege**

The California Constitution provides the right of every person to inspect the public records in any Commission's custody or control, including certain law enforcement records. Absent an exemption recognized under state or federal law, the public's right to disclosure must be broadly construed by public agencies.

Section 7923.600 – 7923.625, known as the “Investigatory Privilege,” is a common exemption from the disclosure of law enforcement records under the CPRA. However, the exemption does not represent an absolute privilege. Not all information maintained by the Commission is exempt from disclosure under section 7923.600 – 7923.625.

On the other hand, material otherwise disclosable under section 7923.600 – 7923.625 may still be withheld under the Investigatory Privilege if disclosure of that material would:

1. Endanger the safety of a witness or other person involved in an investigation or;
2. Endanger the successful completion of the investigation (or a related investigation).

Additionally, the Commission is not otherwise required, irrespective of the information that must be disclosed under section 7923.600 – 7923.625, to disclose the analysis or conclusions of its investigating officers or information discussed by the Commission in closed sessions authorized under the Government Code and Brown Act.

Certain information may also be prevented from disclosure under Government Code section 7922.000 and section 7922.540(a), where a determination is made that the record in question is exempt from disclosure or that “on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

Where the Commission deems it appropriate and does not serve as the custodian of records in regards to a Public Records request, the Commission may forward the request to the Police Department or other appropriate City department for response.

Records that may be disclosed under the Public Records Act include:

**Crime/Incident reports:** Information that must be made available to the general public includes: the time, substance and location of the complaints or request for assistance; the time and nature of law enforcement’s response; the time, date and location of occurrence; the time and date of report; factual circumstances surrounding the crime or incident; a general description of injuries, property and/or weapons involved; and the name and/or age of victim (unless their identity must remain confidential under state law).

Generally, victims and their authorized representatives have greater access than the public, including: the names, addresses and statements of involved persons and witnesses to the incident (not including confidential information) and a description of any property involved.

**Arrest records:** Information that must be made available includes: the name and occupation of the arrestee; a physical description; date of birth; the time and date of the arrest; factual circumstances surrounding arrest; amount of bail; the time and manner of release or the location where the arrestee is held; and all charges, including outstanding warrants, parole or probation holds.

Exempt from arrest records is the arrestee’s personal identifying information (i.e. Social Security number, phone number), criminal history and current address.

**Audio and video footage:** Assembly Bill 748, effective July 1, 2019, amended Government Code section 7924.510(e) to provide greater public access to audio and video recordings, including body worn camera footage from police cameras. Various incident recordings, including both the discharge of a firearm at a person by an officer, and incidents in which the use of force by an officer resulted in death or great bodily injury to a person, must generally be made publicly available within 45 days.

Disclosure may be delayed during an active criminal or administrative investigation, if the disclosure would substantially interfere with that investigation.

The Commission may refer requesters to the Police Department for access to any audio or visual recordings, while maintaining a reasonable expectation of privacy for those depicted in the recording. Agencies are expected to use technology that redacts or distorts images or audio depending on the circumstances. If an agency cannot adequately protect a subject's privacy with the use of such redaction technology, then the entire recording may be withheld.

## **Police Officer Records**

Penal Code section 832.7 was amended to make certain peace officer personnel records disclosable under the CPRA. In general, police officer personnel records are exempt from disclosure except pursuant to a *Pitchess*/discovery motion or other court order.

Penal Code section 832.7 makes some of these records available in response to a CPRA request, including:

1. Reports, investigations and findings related to an incident involving an officer's discharge of a weapon, or the use of force resulting in death or great bodily injury.
2. Any record related to sustained findings that an officer engaged in sexual assault against a member of the public.
3. Any record related to an incident in which sustained findings were made that an officer was dishonest in reporting, investigating, prosecuting a crime, or in regards to the investigation of another peace officer.

The Penal Code also defines the types of records that must be disclosed in these instances, including:

1. Investigative reports, photographic, audio and video evidence, transcripts or recordings of interviews, and autopsy reports.
2. Materials compiled and presented for review to the district attorney or anyone else charged with determining whether to file criminal charges against an officer or a course of disciplinary action.
3. Documents setting forth findings or recommended findings.
4. Copies of disciplinary records relating to the incident.

The Commission may withhold or delay disclosure of these records if the records involve incidents that are the subject of active investigations or deliberations. Records may be redacted if there "there is a specific, articulable, and particularized reason to believe that disclosure" would pose a significant danger to the physical safety of the peace officer or another person. The complete text of the Peace Officer or Custodial Officer Personnel Records legislation may be found at Cal. Pen. Code section 832.7.

## Commission internal procedures for responding to records requests under the California Public Records Act

1. Once a CPRA request is submitted, it must be analyzed and acted upon in a timely manner by the Commission, pursuant to the California Records Act , Gov. Code section 7920.000 et seq., and City Administration Regulations 95.20 and 95.21.
2. When a record is requested, the Commission must respond promptly, but no later than ten (10) calendar days from the receipt of the request, to notify the requester whether records will be disclosed. If the decision is to deny any part of the disclosure, the reasons for the denial must be provided to the requester. The Commission may extend the time to respond for up to an additional fourteen (14) days because of the need: (1) to search for and collect the requested records from various locations under the control of the Commission; (2) to search for, collect, and appropriately examine a large or voluminous amount of separate and distinct records which may be responsive to a single request. (3) to consult with legal counsel and/or another agency having a substantial interest in the request (such as the City of San Diego), or among two or more separate components or departments of another local agency with substantial interest in the request, (4) in the case of electronic or digital records, to compile data, write programming language or a computer program, or to construct a computer report to extract data; and/or (5) for any other reasons pursuant to the CPRA. If possible, records deemed subject to disclosure should be provided at the time the determination is made or within ten days. However, if immediate disclosure is not possible, and the Commission exercises its right to extend the response time beyond the ten-day period, the Commission must do so in writing, stating the reasons for the extension and provide the anticipated date of the extended response. The Commission does not need the consent of the requester to extend the time for response within the fourteen (14) day period. However, if the Commission is having difficulty responding to the request within the ten-day response period, the Commission may obtain an extension by consent of the requester. Any extension agreed to by the requester should be documented in writing. This means that it is not required, in all instances, that records be produced within ten days. On the other hand, the determination and notification of disclosure must be communicated to the requester within ten days.

Since the Commission has ten days from receipt to analyze the request and determine whether disclosure will be made, the staff person designated to handle CPRA requests should be devoted to this specific function.

The Commission must make a reasonable effort to search for and locate records that have been requested. In an effort to locate responsive records, Commission staff or persons most likely within the Commission should be consulted upon receipt of a public records request.

If a portion of a responsive record is exempt from disclosure, the Commission must provide the record in redacted form if the nonexempt information is reasonably segregable from the portions exempt from disclosure. If the Commission does not have or reasonably control a record or has decided for appropriate reasons to withhold a record, or if the requested document is disclosed in a redacted form, the Commission must respond in writing, stating

the legal basis for its decision not to fully comply with the request. The written response should identify by name and title each person responsible for the decision to withhold a record or portion of a record.

There is no requirement the Commission create a “privilege log” or list that identifies the specific records being withheld. The Commission has no duty to create a record that does not exist at the time of the request. However, Commission staff should provide reasonable assistance to a requester who may be having difficulty articulating a request that would identify records responsive to the request or purpose of the request.

3. Records may also be inspected at the Commission office. A requester does not have to give notice in order to inspect public records at the Commission office during normal working hours. However, if the records are not readily accessible, or if portions of the records must be redacted in order to protect exempt material, the Commission must be given a reasonable period of time to perform these functions prior to inspection.
4. CPRA requests for police officer records should be immediately forwarded to affected police officers and the Police Department prior to disclosure of records. Peace officer personnel records will not be released by the Commission except as afforded by law and/or California Evidence Code sections 1403-1047.
5. The CPRA contains no provision for a charge to be imposed in connection with the mere inspection of records. Copies of records may be obtained for the direct cost of duplication, unless the Legislature has established a statutory fee. The direct cost of duplication includes the pro rata expense of the duplicating equipment utilized in making a copy of a record and, conceivably, the pro rata expense in terms of staff time (salary/benefits) required to produce the copy. The cost recovery of a staff person’s time in researching, retrieving and mailing the record is not included in the direct cost of duplication. However, if the Commission must compile records, or extract information from an electronic record or undertake programming to satisfy a request, the requester must bear the full cost, not merely the direct cost of duplication. The right to inspect and copy records does not extend to records that are exempt from disclosure.
6. Commission personnel designated to handle CPRA requests should consult with the General Counsel or legal counsel for specific guidance as necessary, particularly in regards to records exempted from disclosure. If the Commission withholds a record because it is exempt from disclosure, the Commission must notify the requester of the reasons for withholding the record.
7. Materials or documents related to deliberations of the Commission in an authorized closed session are exempted from disclosure under Government Code section 54963.
8. Exempt material must not be disclosed to any member of the public if the material is to remain exempt from disclosure. Once exempted material has been disclosed to any member of the public, including a public member of an ad hoc committee, etc., it generally becomes available upon request to any and all members of the public. Confidential disclosures to other

governmental agencies in connection with the performance of official duties, or disclosures in legal proceedings are not disclosures to members of the public under the CPRA and do not constitute a waiver of exempt material.

## **Public Outreach and Communications**

Consistent with Section 26.1114 (g) of the San Diego Municipal Code, the Commission establishes a procedure covering public communications on the Commission's Internet website.

Public reports on activities shall be made as soon as practical after regular Commission meetings. The Commission shall provide the public with as much information as permitted by law pursuant to, but not limited to, Penal Code sections 832.5-832.8, Evidence Code sections 1040 et seq. and Government Code sections 6254 et seq.

Information included on the Commission's website shall include:

1. Status of the Commission's complaint investigations.
2. List of complaints received.
3. Findings of complaints investigated.
4. Commission recommendations.

The Commission may report on information after a closed session as permitted and authorized under Government Code sections 54950 et seq. The information reported shall be redacted or provided in a manner that protects confidentiality as afforded by law, including the identities of subject officers, witnesses and complainants.

## **CHAPTER NINE**

### **SUBPOENA AND NOTICE PROCEDURES**

#### **Power to Subpoena**

The Commission on Police Practices (Commission) may issue subpoenas. Subpoenas may be issued to secure the personal appearance of a witness to testify or provide testimony in connection with a Commission investigation or hearing. Subpoenas may be issued to require the production of books, papers, or records.

Under San Diego Municipal Code section 26.1110:

(a) The *Commission* has the power to subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other items whenever material to the performance of the *Commission's* duties or exercise of its powers.

(b) A subpoena issued under this section must be issued and signed by the *Executive Director* or their designee.

(c) If a witness fails to appear before the *Commission* at the time and date set by subpoena, or in the case of a subpoena duces tecum, if a record is not produced as required, the *Commission* may, by majority vote, authorize its chairperson or the *Executive Director* to certify the facts to the Superior Court for an order to show cause why the subpoena recipient should not be ordered to comply with the subpoena.

#### **Types of Subpoenas**

*A personal subpoena* may be issued and signed by the Executive Director or their designee. In order to be effective, the subpoena must be signed and dated by the Executive Director or their designee and personally served on the witness or served by any other method of service as afforded by law. Personal service on a witness should be performed by a legal process server. A subpoena may also be delivered by first class certified mail return receipt requested service, electronically when a

person has expressly agreed to accept service by electronic means, or as afforded by law. A sample subpoena for personal appearance is appended as Appendix A. The proof of service must be attached when the subpoena is served by mail or electronically.

A *subpoena duces tecum* seeks the production of documents as described in the subpoena. It must be signed and dated by the Executive Director or their designee and personally served on the person in possession of the documents. A *subpoena duces tecum* may also be delivered by first class certified return receipt requested mail service, electronically by express consent of the person to be served or served as afforded by law. This type of subpoena seeks production of records or documents as opposed to live testimony. A sample subpoena duces tecum is appended as Appendix B. The proof of service must be attached when the subpoena is served by mail or electronically.

## **Receipt of Subpoenas**

As a custodian of various police information or records, the Commission may also be subpoenaed for records in conjunction with various court proceedings. Because many records maintained by the Commission will be confidential and privileged, the General Counsel or legal counsel should be immediately contacted for assistance where a subpoena is served.

A designated Commission staff member should be selected to receive and handle subpoenas to avoid confusion. Once a subpoena is received, it should be promptly reviewed with the General Counsel to determine if the subpoena is overbroad or a motion to quash the subpoena is necessary (refer to the *Pitchess* motion procedures regarding discovery and motions to quash).

Strict attention should be paid to the timeframe for complying with the subpoena. If the subpoena does not afford the statutory time for compliance, or seeks confidential information not subject to subpoena, an objection may be made or motion to quash filed.

A subpoena is not required to be served on the Commission to obtain production of public information pursuant to, and in compliance with, the California Public Records Act.

## **Noticing of City Employees to Testify in Proceedings**

There will be occasions where police officers or City employees will be necessary for testimony in conjunction with investigations or Commission proceedings.

Under San Diego Municipal Code section 26.1108, City employees are required to cooperate in Commission activities. Section 26.1108 states:

(a) It is the policy of the City that all officers and employees of the City cooperate promptly and fully with the *Commission* to ensure the *Commission* can timely and properly perform its duties as required by the Charter, the Council by ordinance, and state and federal laws. A City employee who fails or refuses to comply with this section is subject to discipline, up to and including termination. This requirement to cooperate includes participation in any *investigatory proceeding* set forth in the *Commission's* operating procedures approved by the Council.



If the *Commission* seeks to interview any City employee, including an employee who is the subject of a *complaint*, as part of an *investigatory proceeding*, the *Commission* must provide timely advance written notice to the employee. The *Commission* must also provide timely advance written notice to the City employee's appointing authority. The written notice must specify the date and time of the interview and provide the employee with reasonably sufficient time to secure union or legal representation by the employee's personal attorney, as applicable, and to make any legal objections to the interview, either before or at the time of the interview.

Notice to interview City employees must be issued in writing and in a timely manner such that the employee may confer with a representative of legal counsel. The notice must specify the date and time of the interview. The employee may object to the interview at or before the time of the interview by code.

A sample notice to interview a City employee is appended as Appendix C. Personal service on employees should be requested through the Department head or respective supervisor. It should be noted that by ordinance, all City employees are required to cooperate in Commission activities, which would include the interview process.

## Appendix A

### BEFORE THE COMMISSION ON POLICE PRACTICES FOR THE CITY OF SAN DIEGO

#### SUBPOENA FOR PERSONAL APPEARANCE

To: \_\_\_\_\_

Pursuant to the City of San Diego City Charter, Article V, section 41.2 and San Diego Municipal Code §26.1110, and in furtherance of an investigation, the Commission on Police Practices hereby commands you to appear at the following location:

Commission on Police Practices  
[Address]  
[Date and Time]

You are being subpoenaed regarding an investigation being performed by the San Diego Commission on Police Practices of conduct which may include, but is not limited to, investigation of conduct related to California Penal Code §§ 832.5 – 832.8. You have been identified as a person with information, documents, or who might be able to offer information or evidence in this matter deemed to be relevant to the investigation in this matter.

If you have any questions regarding compliance with this Subpoena, contact: [Commission Staff Name, Title, Contact Information].

Please be advised that willful disobedience, destruction, or concealment of any items requested could result in a referral to law enforcement for criminal prosecution pursuant to California Penal Code §135.

*Failure to comply with the commands of this Subpoena may subject you to an action for contempt or other penalties before the Superior Court of the State of California.*

Dated:

---

Commission on Police Practices  
Executive Director

## Proof of Service

I am employed in the County of San Diego, State of California. I am a citizen of the United States, residing in the county of San Diego, State of California. I am over the age of 18 and am not a party to nor interested in the within action. My business address is \_\_\_\_\_.

On \_\_\_\_\_, I served the attached subpoena described as follows:

By placing the true copy enclosed in a sealed certified mail envelope addressed as follows:

\_\_\_ (By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses specified above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

\_\_ (By Mail) I enclosed the documents in a sealed and certified envelope or package addressed to the persons at the addresses specified above and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. I placed the envelope for collection and mailing, following ordinary business practices. I am readily familiar with business practices for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I placed the envelope or package in the mail at San Diego, California.

(Electronically) I sent the document to (NAME) at the (ELECTRONIC ADDRESS or other means) as mutually agreed upon, on (DATE AND TIME).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_ at San Diego, California.

[Commission Staff Name and Signature]

## Appendix B

### BEFORE THE COMMISSION ON POLICE PRACTICES FOR THE CITY OF SAN DIEGO

#### SUBPOENA DUCES TECUM

To: \_\_\_\_\_

Pursuant to California Code of Civil Procedure §§1985-1985.4, San Diego Municipal Code §26.1110, and in furtherance of an investigation, the Commission on Police Practices hereby commands you, within fifteen (15) days after service, to produce and permit inspection and copying of all documents, records, and other materials described in Exhibit A, by mailing or providing such materials via other mutually agreed upon means, together with a certification from you, dated and signed under penalty of perjury under the laws of the State of California that the documents provided are true, correct and complete copies of all documents responsive to this Administrative Subpoena, to the following location or :

Commission on Police Practices  
[Address]

The subpoenaed items are relevant to an investigation of various conduct, related to California Penal Code §§ 832.5 – 832.8. You have been identified as a person with information, documents, or who might be able to offer evidence in this matter and the documents requested are believed to contain evidence relevant to the investigation in this matter.

If you have any questions regarding compliance with this Subpoena, contact: [Commission Staff Name, Title, Contact Information].

Please be advised that willful disobedience, destruction or concealment of any items requested could result in a referral to law enforcement for criminal prosecution pursuant to California Penal Code §135.

*Failure to comply with the commands of this Subpoena may subject you to an action for contempt or other penalties before the Superior Court of the State of California.*

Dated:

---

Commission on Police Practices  
Executive Director

## Proof of Service

I am employed in the County of San Diego, State of California. I am a citizen of the United States, residing in the county of San Diego, State of California. I am over the age of 18 and am not a party to nor interested in the within action. My business address is \_\_\_\_\_.

On \_\_\_\_\_, I served the attached subpoena described as follows:

By placing the true copy enclosed in a sealed certified mail envelope addressed as follows:

\_\_\_ (By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses specified above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

(By Mail) I enclosed the documents in a sealed and certified envelope or package addressed to the persons at the addresses specified above and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. I placed the envelope for collection and mailing, following ordinary business practices. I am readily familiar with business practices for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I placed the envelope or package in the mail at San Diego, California.

(Electronically) I sent the document to (NAME) at the (ELECTRONIC ADDRESS or other means) as mutually agreed upon, on (DATE AND TIME).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_ at San Diego, California.

\_\_\_\_\_  
[Commission Staff Name and Signature]

## Appendix C

### COMMISSION ON POLICE PRACTICES NOTICE OF INTERVIEW

CONFIDENTIAL

RE: Notice of Interview on \_\_\_\_\_, 202\_

**TO: [Name of Employee]:**

This is to advise you that you are being scheduled to participate in an interview in connection with an investigation conducted by the San Diego Commission on Police Practices. Under San Diego Municipal Code section 26.1108, City employees are required to cooperate in Commission activities. Section 26.1108 states:

- (a) It is the policy of the City that all officers and employees of the City cooperate promptly and fully with the *Commission* to ensure the *Commission* can timely and properly perform its duties as required by the Charter, the Council by ordinance, and state and federal laws. A City employee who fails or refuses to comply with this section is subject to discipline, up to and including termination. This requirement to cooperate includes participation in any *investigatory proceeding* set forth in the *Commission's* operating procedures approved by the Council.

The interview is to be conducted as follows:

**Date:**

**Time:**

**Location:**

**[For police interviews]** The interview is being conducted at a reasonable time and place. By law, you may be accompanied to the interview by a representative or attorney of your choice. The interview will be conducted in full compliance with the Public Safety Officers' Procedural Bill of Rights (Government Code sections 3300 et seq.).

Please feel free to contact [Commission Staff Name, Title, Contact Information].  
Your supervisor or department head is also copied on the notice.

Date:

---

Commission on Police Practices  
Executive Director

Cc: Supervisor/Department Head

## **CHAPTER TEN**

### **PITCHESS MOTION PROCEDURES MOTIONS TO DISCOVER CONFIDENTIAL POLICE FILES AND RECORDS**

#### **Commission on Police Practices on Confidentiality of Police Records**

It is required that the Commission on Police Practices (Commission) maintain the confidentiality of police personnel records, complaints against San Diego Police Department (Police Department) officers and information obtained from these complaints or records. Police personnel records that are in the possession of the Commission or its staff, are confidential and shall not be disclosed to any member of the public, including the complainant, except in accordance with applicable law.

Copies of police personnel records and complaints of the Commission shall be made available to the Police Department, unless prohibited by applicable law.

The disclosure of information, including but not limited to, the identification of subject officers, complaints under review or investigation, public documents, and other reports shall also be in compliance with applicable law.

#### **Discovery of Police Officer Personnel Files**

For many years this discovery process was allowed only in cases where a defendant alleges that he acted in self-defense against an officer who used excessive force against him. Over the years, the courts have expanded on the scope of alleged police misconduct that would justify intrusion into the confidential personnel files of peace officers. Potentially acceptable allegations in support of Pitchess discovery may now include lying and falsifying police reports, planting and fabricating evidence, ethnic, racial, and sexual orientation bias, coerced confession, “code of silence” and others. Such discovery is based on the Supreme Court’s holding in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

The most common Pitchess motion seen today occurs in criminal cases, and challenges what the officer has reported in his official police report, or that the officer lied, planted, or fabricated evidence, prepared a false police report, or engaged in a pattern of misconduct. Defendants may seek complaints against *any* officer who was involved in, present during or investigated his arrest, or who prepared a report relating to the arrest/investigation.

Requests are made to the court to search an officer’s confidential personnel files for prior complaints against the officer for unlawful arrest, excessive force, false testimony, fabrication of evidence, planting evidence, false police reports and the like. Defendants seek greater access to officer files and, over objections, may seek the internal investigation reports from the Police Department and the

Commission, including witness statements, compelled statements of the officers provided to investigators, photographs, audio- and videotapes, and sometimes psychological testing results. Other related reports and documents prepared, or maintained, by the Commission may also be subject to discovery motions in a criminal or civil context.

The majority of law in this area focuses on criminal discovery; however, the Pitchess process is equally applicable in civil cases – most commonly police misconduct litigation. By ordinance, the Commission must handle and litigate subpoenas and Pitchess motions seeking discovery. Discovery of confidential police personnel records maintained by the Commission may be sought to prove a pattern and practice of police misconduct, or that the Police Department was made aware of a problem officer and failed to act on the information or recommendation by the Commission.

Most importantly, police officer personnel files are often sought in high profile cases and officer involved shootings in federal criminal and civil rights cases. State law privileges of confidentiality are not recognized in cases in which federal rights or federal civil rights are litigated. The federal courts afford these state law privileges some weight, and federal common law may be applied. The role of the Commission General Counsel, or outside counsel, in these matters should be to represent that the Legislature and courts have provided laws to ensure that courts engage in a fair, balanced, and thorough review of the need for this discovery, while balancing an officers' rights to confidentiality in their personnel records.

## **Background for Police Discovery or Pitchess Motions**

Police officer personnel discovery and the Pitchess motion process is codified under various California Statutes.

Evidence Code §1043-1047 enumerate the discovery process.

### **Bringing a Pitchess Motion**

Penal Code § 832.7 states the basic premise that peace officer personnel records and records of citizen complaints, “. . . or information obtained from these records . . .” are confidential and “*shall not*” be disclosed in any criminal or civil proceeding except by discovery pursuant to Evidence Code §§1043 and 1046. Penal Code §832.8 defines “personnel records” to include personal data, medical history, appraisals and discipline, complaints and investigations relating to an event an officer perceived and/or relating to the manner in which their duties were performed, and any other information the disclosure of which would constitute an unwarranted invasion of privacy. In essence, any file maintained by the Commission under an officer’s name becomes a part of that officer’s personnel file subject to the confidentiality and discovery provisions of the above provisions.

Evidence Code §1043 sets out the basic requirements for a discovery motion seeking personnel files or records. The motion must be a court written motion noticed according to the requirements of CCP §1005. The notice requirements are mandatory. “No hearing upon a motion for discovery or disclosure shall be held without full compliance with the notice provisions of this section, except upon a showing by the moving party of good cause for non-compliance, or upon a waiver of the hearing by the government agency identified as having the records.” (Evidence Code §1043(c).)



If there are allegations of the use of excessive force by the officers, the motion must also include a copy of the police report per Evidence Code §1046. The motion must be served on the agency having custody and control of the records, whether the CPP or SDPD and the officer must be given notice of the motion by the CPP or SDPD, even if s/he no longer works for the agency. (*Abatti v. Superior Court* (203) 112 Cal.App.4<sup>th</sup> 39.)

Assembly Bill (AB) 1600 took effect on January 1, 2020, and shortens the filing timelines for Pitchess motions in criminal matters. In addition, the personnel records of supervisory officers are potentially discoverable. Prior to the passage of AB 1600, Evidence Code §1403 required that a criminal defendant file written notice of a Pitchess motion at least 16 court days before hearing. AB 1600 amended this provision to allow a Pitchess motion in a criminal matter to be filed as little as 10 court days before the hearing.

Moreover, Pitchess motion opposition by the Commission must now be filed no less than five court days before hearing and reply papers must be filed no less than two court days before hearing. Court holidays and weekends do not count as "days" for the purposes of these timelines. The timelines for Pitchess motions in civil matters remain unchanged.

An important change made by AB 1600 is in regard to discovery of personnel records of supervisory officers. Before the enactment of AB 1600, Evidence Code §1047(a) prohibited the disclosure of personnel records of supervisory officers or other peace officers or custodial officers who were not present during the arrest, had no contact with the party seeking disclosure from the time of arrest until the time of booking, or who were not present at the time the conduct at issue occurred within a jail facility. In efforts to expand accountability, AB 1600 added an exception to this rule. The personnel records of a supervisory officer who had direct oversight of a peace officer or custodial officer and who issued command directives or had command regarding the circumstances at issue are discoverable if the supervisory officer was supervising a peace officer or custodial officer who: (1) was present during the arrest, (2) had contact with the party seeking disclosure from the time of arrest until booking, or (3) was present at the time the alleged conduct occurred within a jail facility.

### **Senate Bill 1421**

Senate Bill 1421 makes a Pitchess motion unnecessary for some types of information requests. Under SB 1421, four types of police records are now open for public inspection. In general, these records pertain to:

1. Officer-involved shootings;
2. Use of force resulting in death or great bodily injury;
3. Sustained findings where an officer commits sexual assault;
4. Where an officer commits an act of dishonesty, perjury, destroys evidence or files a false report.

In the four scenarios above, SB 1421 authorizes the public inspection of "records" found in an officer's personnel file. Such "records" may include such items and information as:

1. Investigative reports;
2. Photographic, audio and video evidence;
3. Transcripts or recordings of interviews;
4. Autopsy reports;
5. Documents setting forth findings or recommended findings; and copies of disciplinary records.

Even after Senate Bill 1421, Pitchess motions are still necessary if a defendant seeks information from an officer's personnel file; and the information is not authorized for inspection under SB 1421. Examples of information a defendant may seek through a discovery motion that is not covered within SB 1421 may include:

1. Records that show that an officer racially profiled an individual; or,
2. Records that show that an officer used excessive force that did not result in death or great bodily injury;
3. Records that show that an officer coerced a confession; or
4. Records show other prejudicial acts, or the falsification of evidence/testimony.

Defense attorneys often argue that police records – in particular an officer's personnel file – serve a very important source for relevant evidence. In particular, criminal defendants desire to ascertain whether an arresting officer committed some type of misconduct in past cases. A showing of any pattern or practice of misconduct is arguably critical to build an effective defense.

Even where certain records are subject to disclosure, Senate Bill 1421 states that some information must get redacted, or edited, to protect the identity of certain parties and witnesses. The information that gets redacted includes, but is not limited to:

1. Personal information (e.g., addresses, telephone numbers, and names of family members);
2. Confidential medical or financial information;
3. Information protected from disclosure under federal law;
4. Information the disclosure of which would create a danger to an officer's safety; and,
5. Information where the public interest served by not disclosing it outweighs the public interest served by disclosing it.

### **The Pitchess Motion Procedure**

California Evidence Code §§1043 and 1045 outline the process for filing a Pitchess motion. The process essentially includes three important elements. These are:

1. Procedural steps for filing the written motion as outlined under Evidence Code §1043;
2. A showing of "good cause;" and,
3. An "*in camera*" or in chambers private hearing with the judge, Commission custodian of records and a court reporter.

Under Evidence Code §1043, a Pitchess motion must include:

1. Identification of the criminal court case, the defendant, or the officer(s) whose records are being sought, and the governmental agency that has custody of the records;
2. A description of the type of records that are being sought;
3. Proof that the defendant has notified the agency that holds the records of the motion and proof of service upon the Commission and subject officer; and
4. An affidavit or declaration establishing good cause for discovery or invasion into the police officer's personnel file.

The affidavit or declaration demonstrating "good cause" is the most important part of a California Pitchess motion. The person seeking to compel discovery has the burden of proof in the discovery proceeding. A showing of "good cause" exists if the affidavit sets forth both:

1. A specific factual scenario demonstrating the relevance and need for discovery in juxtaposition to the defendant's case; and
2. The reasons why the subject discovery would be relevant in the defendant's case.

### **Motions to Quash Subpoenas for Records Served on the Commission**

Many times, attorneys for criminal defendants or litigants try to access records by issuing a subpoena duces tecum. Any subpoena or request for records received by the Commission should promptly be provided to the Commissions' General Counsel. Although such subpoenas are appropriate in certain instances, they are not necessarily dispositive when seeking police records in state court. Where such subpoenas are issued to the Commission, it may be necessary to file a Motion to Quash the subpoena. The motion to quash is appropriate since access to such records in state court may only occur to the provisions of the public records action under Penal Code §832.7 as discussed above, or pursuant to a noticed Pitchess motion.

### **Required Notice to the Officer where a Pitchess Motion is Filed**

Where police discovery is sought by a records request, subpoena or a Pitchess motion, the Commission must provide notice to the subject officer and the Police Department. A copy of the subpoena or discovery motion should also be provided to the officer. It is not required that the officer attend the court proceeding but notice of the same is a prerequisite in the discovery process. Appendix A is a sample notice to the officer.

### **Opposition to the Pitchess Motion**

It should be noted that the Pitchess process does not apply in federal court. Access to records is broader and less protected in federal court. Nevertheless, the same or similar arguments and objections to disclosure should be raised and argued as necessary. In addition, federal discovery may be broader than in state court, and it might be necessary to consider the preparation of a privilege log and/or request an *in-camera* review of records before the U.S. District Court Judge or Magistrate Judge.

In many instances, litigants seek information broader than names and addresses of complaints. Requests are often made for investigator notes, findings, and conclusions. Such requests may be argued to be overbroad and beyond the scope of discovery under the Penal Code in a criminal matter, where conclusions of investigators may be excluded from discovery under the Penal Code. Arguments should be made to refute the requests for discovery into a police officer personnel file and personnel records to preserve the integrity of the Commission's ability to conduct investigations and to preserve integrity of operations. In this regard, the opposition to the motion may argue the official information privilege afforded under Evidence Code §1040.

### **The In Camera Hearing**

If the above procedural requirements are met, and good cause is demonstrated, then a Pitchess motion moves onto an “*in camera*” or private hearing conducted by a judge. “*In camera*” means that the hearing is private or in the judge's chambers rather than in open court. The only individuals that usually attend are the attorney for the Commission, custodian of records (Executive Director) and a court reporter.

During the *in camera* review hearing, the trial court judge reviews the personnel file and determines whether or not the information in the officer's personnel files is relevant to the defendant's defense. Only information that the judge determines is relevant will be disclosed to the defendant. The judge does not serve as a trier of fact, and consequently does not decide credibility or weigh the evidence.

There are certain types of information that the judge does not disclose to the defendant who files a Pitchess motion (unless the information is clearly exculpatory under *Brady v. Maryland* (1963) 373 U.S. 83, 87). Records that should not be disclosed as a matter of law include:

- Information about complaints against the officer(s) that occurred more than five years (or the corresponding statutory period for various types of misconduct) before the alleged police misconduct in the defendant's case;
- The investigative conclusions of internal investigator.

Generally, in state courts, only the names and addresses of witnesses are disclosed. Moreover, if there is good cause, the Commission should request a protective order by the court to keep the information confidential.

### **Limitations of Disclosure**

In criminal matters, records of complaints concerning conduct which occurred more than five years prior to the incident must be maintained and may be subject to disclosure. Records of complaints occurring more than five years prior are not generally subject to disclosure in criminal matters.

However, where the Commission has records that are responsive to a Pitchess motion and are older than five years, it may be required to bring the records to court in the event of an *in camera* review. In *City of Los Angeles v. Superior Court* (2002) 29 Cal.4<sup>th</sup> 1, the Court held that whether or not this information will be disclosed depends on how much significance the court places on the information as it relates to the subject matter of the litigation that generated the discovery motion. If the

significance of the matter is similar to exculpatory information under *Brady v. Maryland, supra*, disclosure of the information may be ordered by the court.

As discussed above, in civil matters discovery into police records may be broader. Records over five years may be discovered if they are maintained by the Commission and deemed relevant to the litigation. Civil discovery is more liberal in this regard, particularly in federal court.

### **Findings and Conclusions of Investigators**

Conclusions of investigators for the Commission are generally excluded from discovery pursuant to Penal Code §832.5. On the other hand, the Supreme Court held that a department can be required to disclose not only whether discipline was imposed, but what discipline was involved. (See *City of San Jose v. Superior Court*, 5 Cal. 4<sup>th</sup> 47, 55.)

### **Protective Orders**

Even where discovery is granted pursuant to a Pitchess motion or discovery motion in federal court, the CPP may seek a protective order from the court confining any discovery to the instant matter at hand. See Evidence Code §1045.

**Appendix A**

**Commission on Police Practices Notification of Pretrial Discovery Motion**

To: Commanding Officer, \_\_\_\_\_ (Area/Division)

From: Commission on Police Practices Executive Director

CONCERNED OFFICER: \_\_\_\_\_ Serial NO: \_\_\_\_\_

Pursuant to Evidence Code §1043(a), notice is given that a discovery motion has been filed in the below case and will be heard in the court indicated below. The discovery motion seeks to discover some or all of the personnel or internal affairs records which the San Diego Police Department maintains on the above officer's employment.

CASE NO: \_\_\_\_\_ DATE OF HEARING: \_\_\_\_\_

CASE NAME: \_\_\_\_\_

ATTORNEY AND/OR PERSON REQUESTING: \_\_\_\_\_

COURT: \_\_\_\_\_ TIME \_\_\_\_\_

LOCATION: \_\_\_\_\_

Note: The law does not require that the officer be present at the hearing. If the officer chooses to attend the hearing, it would be on an off-duty basis with no overtime compensation.

Certification by Commission on Police Practices:

I notified the officer of the above Pretrial Discovery Motion on \_\_\_\_\_ (Date)

In Person/Telephonically/ by Mail

---

Signature of Executive Director

---

Signature of Officer

Return original form to:

Commission on Police Practices

[Address]

DRAFT